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# TREASURY DECISIONS

## UNDER CUSTOMS AND OTHER LAWS

## VOL. 31

## JULY-DECEMBER, 1916

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W. G. MCADOO

Secretary of the Treasury

WASHINGTON
GOVERNMENT PRINTING OFFICE
1917

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# LETTER OF INSTRUCTION.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
*Washington, D. C., December 31, 1916.*

The following instructions are published for the information and guidance of customs officers and others concerned:

1. Decisions of the Board of United States General Appraisers adverse to the Government will, if not appealed from, take effect 60 days after their respective dates, except that decisions based on protests filed in Alaska and in the insular and other outside possessions of the United States will take effect 90 days after their respective dates, in accordance with subsection 29 of section 28 of the act of August 5, 1909. Entries covering the merchandise the subject of such decisions will be reliquidated in harmony therewith at the expiration of the period mentioned, except that entries covering merchandise the subject of decisions of the board which follow a given decision of the Court of Customs Appeals involving the same issue will be reliquidated immediately upon receipt of orders from the board.

2. Entries the subject of protests which have not been forwarded to the board, and which are covered in principle by a given decision of the Court of Customs Appeals, will be reliquidated in harmony with the said decision after 30 days have elapsed from the date thereof.

3. Unliquidated entries which involve issues covered by a given decision of the Court of Customs Appeals, and which would in ordinary course be liquidated within 30 days after the rendering of such decision, will be suspended until 30 days have elapsed from the date of such decision, and will then be liquidated in accordance with the principle laid down by the court.

4. In the absence of specific instructions from the department to the contrary, decisions of the Board of United States General Appraisers adverse to the Government, if appealed from by the department, will not result in any change of practice prior to the decision of the appeal by the Court of Customs Appeals.

5. Decisions of the Court of Customs Appeals adverse to the Government will become effective upon the issuing of orders by the Board of United States General Appraisers pursuant to the mandates of the said court. Entries covering the merchandise the subject of such decisions will be reliquidated only upon receipt of such orders.

W. G. MCADOO,
*Secretary of the Treasury.*



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# CUSTOMS.

(T. D. 36546.)

*Values of foreign coins.*

[Circular No. 1.]

TREASURY DEPARTMENT, *July 1, 1916.*

In pursuance of the provisions of section 25 of the act of August 27, 1894, I hereby proclaim the following estimate by the Director of the Mint of the values of pure metal contents of foreign coins to be the values of such coins in terms of the money of account of the United States, to be followed in estimating the value of all foreign merchandise exported to the United States during the quarter beginning July 1, 1916, expressed in any such metallic currencies.

Entries of merchandise liquidated upon the values proclaimed herein will be subject to reliquidation upon the order of the Secretary of the Treasury whenever satisfactory evidence shall be produced to him showing that the values in United States currency of the foreign money specified in the invoices were, at the date of certification, at least 10 per cent more or less than the values herein proclaimed.

W. G. MCADOO, *Secretary of the Treasury.*

***Estimate by Director of the Mint of the values of foreign coins.***

| Country. | Legal standard | Monetary unit. | Value in terms of United States money. | Remarks.[1] |
|---|---|---|---|---|
| Argentine Republic | Gold | Peso | $0.9648 | Currency: Depreciated paper, convertible at 44 per cent of face value. |
| Austria-Hungary | do | Crown | .2026 | |
| Belgium | Gold and silver | Franc | .1930 | Member of Latin Union; gold is the actual standard. |
| Bolivia | Gold | Boliviano | .3893 | 12½ bolivianos = 1 pound sterling. |
| Brazil | do | Milreis | .5462 | Currency: Government paper. Exchange rate about 25 cents to the milreis. |
| British colonies in Australasia and Africa. | do | Pound sterling | 4.8665 | |
| Canada | do | Dollar | 1.0000 | |
| Central American States: | | | | |
| Costa Rica | do | Colon | .4653 | |
| British Honduras | do | Dollar | 1.0000 | |
| Nicaragua | do | Cordoba | 1.0000 | |
| Guatemala, Honduras, Salvador | Silver | Peso | .5029 | Guatemala: Currency, inconvertible paper, exchange rate about 40 pesos=$1. Honduras: Currency, bank notes, exchange rate about $0.35. Salvador: Currency, convertible into silver on demand, exchange rate about $0.42. |
| Chile | Gold | do | .3650 | Currency: Inconvertible paper; exchange rate, approximately, $0.14. |

[1] The exchange rates shown under this heading are not to take the place of the consular certificate where it is available.



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*Estimate by Director of the Mint of the values of foreign coins*—Continued.

| Country. | Legal standard. | Monetary unit. | Value in terms of United States money. | Remarks.[1] |
|---|---|---|---|---|
| China | Silver | Tael: Amoy | $0.8244 | The tael is a unit of weight; not a coin. The customs unit is the Haikwan tael. The values of other taels are based on their relation to the value of the Haikwan tael. |
| | | Canton | .8219 | |
| | | Chefoo | .7885 | |
| | | Chinkiang | .8053 | |
| | | Fuchau | .7626 | |
| | | Haikwan (customs) | .8388 | |
| | | Hankow | .7713 | |
| | | Kiaochow | .7989 | |
| | | Nanking | .8158 | |
| | | Niuchwang | .7731 | |
| | | Ningpo | .7926 | |
| | | Peking | .8037 | |
| | | Shanghai | .7530 | |
| | | Swatow | .7615 | |
| | | Takau | .8296 | |
| | | Tientsin | .7989 | |
| | | Dollar: Yuan | .5402 | |
| | | Hongkong | .5422 | |
| | | British | .5422 | |
| | | Mexican | .5462 | |
| Colombia | Gold | Dollar | 1.0000 | Currency: Inconvertible paper: exchange rate, approximately, $105 paper to $1 gold. |
| Cuba | do | Peso | 1.0000 | |
| Denmark | do | Crown | .2680 | |
| Ecuador | do | Sucre | .4867 | |
| Egypt | do | Pound (100 piasters). | 4.9431 | The actual standard is the British pound sterling, which is legal tender for 97½ piasters. |
| Finland | do | Mark | .1930 | |
| France | Gold and silver | Franc | .1930 | Member of Latin Union; gold is the actual standard. |
| German Empire | Gold | Mark | .2382 | |
| Great Britain | do | Pound sterling | 4.8665 | |
| Greece | Gold and silver | Drachma | .1930 | Do. |
| Haiti | Gold | Gourde | .9647 | Currency: Inconvertible paper; exchange rate, approximately, $0.16. |
| India (British) | do | Rupee | .3244 | 15 rupees = 1 pound sterling. |
| Italy | Gold and silver | Lira | .1930 | Member of Latin Union; gold is the actual standard. |
| Japan | Gold | Yen | .4985 | |
| Liberia | do | Dollar | 1.0000 | Currency: Depreciated silver token coins; customs duties are collected in gold. |
| Mexico | do | Peso | .4985 | Mexican exchange rate violently fluctuating. |
| Netherlands | do | Florin | .4020 | |
| Newfoundland | do | Dollar | 1.0139 | |
| Norway | do | Crown | .2680 | |
| Panama | do | Balboa | 1.0000 | |
| Paraguay | Silver | Peso | .4211 | Currency: Depreciated paper, exchange rate 1,550 per cent. |
| Persia | Gold and silver | Kran | .1700 | This is the value of the gold kran. Currency is silver circulating above its metallic value; exchange value of silver kran, approximately, $0.117. |
| Peru | Gold | Libra | 4.8665 | |
| Philippine Islands | do | Peso | .5000 | |
| Portugal | do | Escudo | 1.0806 | Currency: Inconvertible paper; exchange rate, approximately, $0.70½. |
| Roumania | do | Leu | .1930 | |
| Russia | do | Ruble | .5146 | |
| Santo Domingo | do | Dollar | 1.0000 | |
| Servia | do | Dinar | .1930 | |
| Siam | do | Tical | .3709 | |
| Spain | Gold and silver | Peseta | .1930 | Valuation is for the gold peseta; currency is silver circulating above its metallic value; exchange value, approximately, $0.20. |
| Straits Settlements | Gold | Dollar | .5678 | |
| Sweden | do | Crown | .2680 | |
| Switzerland | do | Franc | .1930 | Member of Latin Union; gold is the actual standard. |
| Turkey | do | Piaster | .0440 | 100 piasters equal to the Turkish £. |
| Uruguay | do | Peso | 1.0342 | |
| Venezuela | do | Bolivar | .1930 | |

[1] The exchange rates shown under this heading are not to take the place of the consular certificate where it is available.

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(T. D. 36547.)

*Consular invoices—Increased duties.*

**When entry is made on pro forma invoice and the consular invoice subsequently produced shows increased duties, they should be collected on the bond without reliquidation of the entry.**

TREASURY DEPARTMENT, *July 1, 1916.*

SIR: The department returns herewith entries Nos. 41170, 62952, and 109830, submitted with your letter of the 8th instant.

It appears that each entry was made on a pro forma invoice and bond given for the production of a certified invoice; that the certified invoices show values different from those stated in the pro forma invoices, and that the entered value in each instance was approved by the appraiser.

The pro forma invoice used in making entry No. 41170 stated the freight included in the purchase price as $50, while the certified invoice showed $60.16, resulting in the consular invoice value being less than that shown in the pro forma invoice and declared on entry; while on entry No. 62952 the conditions are reversed, the deduction for freight in the pro forma invoices exceeding those in the certified invoices, resulting in the value shown in the certified invoices being greater than that declared on entry.

A discount of 3 per cent was deducted on the pro forma invoice used on entry No. 109830, whereas the certified invoice showed no discount and the value was greater than the entered or appraised value.

In the case of entry No. 41170 the consular invoice value is less than the entered value and, therefore, should be ignored in the liquidation of the entry, as paragraph I of section 3 of the tariff act provides that duty shall not be assessed on less than the entered value.

It appears to be the practice to liquidate or reliquidate entries for the purpose of collecting the increased duties found to be due when a bond is given for the production of a duly certified invoice and the value stated in the said invoice is higher than the entered or appraised value.

It is the opinion of the department that in such cases the entry should be liquidated upon the entered or appraised value without reference to the value stated in the consular invoice and that when a higher value is shown in the certified invoice, the increased duty should be collected as duty due under the bond given for the production of the said invoice, without, however, reliquidating the entry.

It follows from the foregoing that entries Nos. 62952 and 109830 should be liquidated upon the appraised value and the increased duty shown by the certified invoice to be due should be collected under the bonds given for the production of the certified invoices.

Respectfully, ANDREW J. PETERS,
*Assistant Secretary.*

(105183.)

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36548.)

*Jelutong—Crude gums.*

**Decision of the United States Court of Customs Appeals (T. D. 36427) relative to spruce gum to be applied to crude jelutong and other similar gums imported 30 days after May 12, 1916.**

TREASURY DEPARTMENT, *July 3, 1916.*

SIR: The department is in receipt of your letter of the 27th ultimo relative to the assessment of duty on certain so-called crude rubber gum, said to be the latex or sap extracted from the jelutong rubber tree, covered by entry No. 183720.

It appears that similar merchandise has been passed free of duty as a crude drug under paragraph 477 of the tariff act of 1913, but by reason of the decisions of the United States Court of Customs Appeals (T. D. 36427) and others, relative to spruce gum, the classification of the article has been changed to that of a nonenumerated unmanufactured article dutiable at 10 per cent ad valorem under paragraph 385 of the tariff act. Application is made for at least 30 days' notice before the assessment of duty on the said article.

It appears that the merchandise is not crude india rubber or a crude drug, but consists of a whitish gum used in combination with india rubber as an adulterant. Such merchandise, it appears, is not specifically provided for in the tariff, and in the opinion of the department is properly dutiable as a nonenumerated unmanufactured article at the rate of 10 per cent ad valorem under paragraph 385 of the tariff act of 1913, in accordance with the decisions of the United States Court of Customs Appeals in T. D. 36427, T. D. 36460, and T. D. 36508 relative to spruce gum.

As it appears, however, that the change in classification is made by reason of a principle of tariff interpretation made by the court upon a different article, it will be applied to merchandise of the character now under consideration and other similar gums only when imported 30 days after May 12, 1916, the date of T. D. 36427.

Respectfully, ANDREW J. PETERS,
(68188.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36549.)

*Importation of eggs of game birds.*

**Paragraph 1 of the regulations in T. D. 30637 of May 23, 1910, specifying the birds that are recognized as game birds, amended.**

TREASURY DEPARTMENT, *July 1, 1916.*

*To collectors and other officers of the customs:*

Paragraph 1 of the regulations in T. D. 30637 of May 23, 1910, governing the importation of eggs of game birds, is amended to read as follows:

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"The following are recognized as game birds: The *Callinæ*, commonly known as wild turkeys, grouse, capercailzie, pheasants, partridges, and quail; the *Otididæ*, commonly known as bustards; the *Rallidæ*, commonly known as rails and crakes; the *Anatidæ*, commonly known as swans, geese, and ducks; the *Tinamidæ*, commonly known as tinamous; the *Charadriidæ*, including the plover and lapwing; the *Gruidæ*, or cranes; and the *Columbidæ*, or pigeons. Cases involving the questions whether birds not named in this list are or are not game birds should be submitted to the department for instructions."

(94598.) ANDREW J. PETERS, *Assistant Secretary.*

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(T. D. 36550.)

*Drawback on flavoring extracts.*

T. D. 36473 of June 7, 1916, amended to include flavoring extracts also shown by the manufacturer's sworn statement.

TREASURY DEPARTMENT, *July 3, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on flavoring extracts designated as artificial strawberry old, lemon, 1916 honey, currant, violet, strawberry No. 1, quince, grape special No. 3, pear flavoring, apple, grape, pineapple, 1916 vanilla, F. & F. peach and peach extra, terpineless lemon, terpineless orange, and the following flavors: Nectarine, rose, orchatta and nectar, manufactured by Fries & Fries, of Cincinnati, Ohio, with the use of wholly domestic tax-paid alcohol.

This decision amends T. D. 36473 of June 7, 1916, the requirements and provisions of which govern the drawback to be paid on the articles specified herein.

Respectfully, ANDREW J. PETERS,
(104569–1) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Cleveland, Ohio*

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(T. D. 36551.)

*Changes in classification.*

Instructions regarding application of new rates in changes in classification.

TREASURY DEPARTMENT, *July 3, 1916.*

*To collectors and other officers of the customs:*

Question 52 of the collector's conference of October 4 to 9, 1915, is as follows:

(52) Suggested that when classification is changed to a lower rate, following department's instructions or information from New York or some other port, such lower rate should apply to all invoices reported on and not liquidated within 30 days; and that when classification is changed to a higher rate such change is applied to all unliquidated invoices.

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In accordance with the recommendation that the department issue appropriate instructions, the following instructions are hereby promulgated:

(1) Where the classification of an article of merchandise is changed to a lower rate under the department's instructions, or upon information as to the proper classification received from New York or otherwise, such lower rate of duty shall be applied to all unliquidated entries, and to all protested entries involving the same issue which have not been forwarded to the Board of United States General Appraisers.

(2) Classification of an article of merchandise at a higher rate of duty, under the same conditions, where it appears that the practice at the various ports has not been uniform, shall be applied to all entries not liquidated until on or after the date of the department's instructions or receipt of the information if other than by department's instructions, covering such merchandise imported prior thereto and to all similar merchandise imported or withdrawn from warehouse or general order on and after such dates.

(3) Classification at a higher rate of duty where it appears that the practice at the various ports has been uniform, and at a lower rate, should not be made until the question has been referred to the department and instructions issued relative thereto, in accordance with T. D. 28627.

(105157.) ANDREW J. PETERS, *Assistant Secretary.*

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(T. D. 36552.)

*Analyses of samples of opium.*

Referring to T. D. 36418 of May 22, 1916, the department informs collectors of the circumstances under which the Department of Justice will pay the expenses of analyzing opium samples seized under the act of January 17, 1914, elsewhere than in the office of the Commissioner of Internal Revenue.

TREASURY DEPARTMENT, *July 6, 1916.*

SIR: Referring to your letter of May 17, 1916, and to T. D. 36418 of the 22d idem, the Attorney General states that where it would be inconvenient to send samples of seized opium to the Commissioner of Internal Revenue for analysis, and where it would be necessary to send the expert from the commissioner's office a long distance in order to testify, the Department of Justice has no objection to the payment of the expenses of outside experts where such expenses are reasonable.

You will be governed accordingly.

Respectfully, ANDREW J. PETERS,
(90958.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Los Angeles, Cal.*

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(T. D. 36553.)

*Drawback on condensed milk.*

**Drawback allowed on condensed milk manufactured by the International Milk Products Co., of Cooperstown, N. Y., and Morristown, N. Y., with the use of refined sugar produced from imported raw sugar.**

TREASURY DEPARTMENT, *July 8, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on condensed milk manufactured by the International Milk Products Co., of Cooperstown, N. Y., and Morristown, N. Y., with the use of refined sugar produced from imported raw sugar.

A manufacturing record shall be kept, which will show, in the case of each lot of condensed milk manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity and identity of the refined sugar and the quantity and character of milk used, the quantity of condensed milk produced, and the brand name thereof. A sworn abstract from such manufacturing record shall be filed with each drawback entry.

The quantity of refined sugar which may be taken as a basis for the allowance of drawback shall not exceed the quantity appearing in the exported condensed milk, with a maximum of the quantity used, as shown by the abstract from the manufacturing record.

The sworn statement of the manufacturers, dated June 24, 1916, is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on condensed milk exported on and after May 24, 1916.

Respectfully, WM. P. MALBURN,
(103025-5.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36554.)

*Monthly report to department of absence of employees discontinued.*

[Circular No. 60.]

TREASURY DEPARTMENT, *July 3, 1916.*

*To officers and employees of the Treasury Department:*

Effective from and after this date the practice of submitting monthly reports of absences of employees to the Division of Appointments, as required in paragraph 10 of the time and leave regulations of December 9, 1912, will be discontinued.

Instead of the monthly reports, the various bureaus and offices will submit a report to the Division of Appointments after December 31 of each year showing the time taken by the employees during the entire year.

BYRON R. NEWTON, *Acting Secretary of the Treasury.*

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(T. D. 36555.)

*Drums containing oxygen gas.*

**Free entry upon reimportation of drums used for the shipment of oxygen gas under paragraph 404, tariff act of 1913, on compliance with the department's regulations.**

TREASURY DEPARTMENT, *July 10, 1916.*

*To collectors and other officers of the customs:*

The department is in receipt of a letter from the Secretary of Agriculture stating that, in the opinion of the Bureau of Chemistry, oxygen gas is a chemical coming within the meaning of the provision of paragraph 404 of the existing tariff act providing for the free entry upon reimportation of iron or steel drums of either domestic or foreign manufacture used for the shipment of acids or other chemicals.

Free entry will therefore be allowed upon the reimportation of iron or steel drums used for the shipment of oxygen gas under paragraph 404, on compliance with the department's regulations.

(90716.) WM. P. MALBURN, *Assistant Secretary.*

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(T. D. 36556.)

*Records and blank forms—Changes in.*

TREASURY DEPARTMENT, *July 10, 1916.*

*To collectors and other officers of the customs:*

The following changes in the regulations relating to records and blank forms and the rendering of accounts are hereby promulgated for the information and guidance of customs officers:

Customs Cat. No. 3011 A and 3011 B, "Record of arrival, departure, and absence of employees," is abolished. Departmental stock form 2152, "Individual record of absence," will be used. Blank application for annual or without-pay leave, or for extension of leave on account of sickness, departmental stock form 2217, will be furnished on requisition.

Customs Cat. No. 3013, "Report of absence of employees." This report will be made in duplicate at headquarters port, with the use of carbon paper, and the original forwarded to the Treasury Department. At ports of entry the report will be made in triplicate, the original and one copy sent to the headquarters port (original to be forwarded to the Treasury Department). The duplicate, or triplicate copy, as the case may be, to be retained at the port where made, in lieu of the record book (customs Cat. No. 3013 B), which form is hereby abolished.

Customs Cat. 3015, "Abstract of changes of employees," is abolished. All changes in employees will be reported as made.

Customs Cat. 3017, "Report of no changes of employees." This form is abolished for the foregoing reasons.

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Customs Cat. No. 3041. "Requisition on the department for stationery." This form is abolished. Customs officers will use departmental stock form 2162 for regular requisitions, and No. 2163 for supplemental requisitions.

Customs Cat. No. 3235, "Inquiry as to casualty to vessels," has been given Coast Guard form No. 2694.

Customs Cat. No. 3237, "Wreck report," has been given Coast Guard form No. 2692.

Customs Cat. No. 3239, "Record of casualties to vessels," has been given Coast Guard form No. 2693.

Requisitions for the foregoing Coast Guard forms should be addressed to the captain commandant, Coast Guard, Washington, D. C.

Customs Cat. No. 3341, "Affidavit on free entry of works of art over 20 years old," is abolished.

Customs Cat. No. 3353, "Affidavit to accompany animals from Canada." This form has been adopted for use in connection with regulation 35, B. A. I. Order 209, Department of Agriculture, published in T. D. 35129, dated February 16, 1915.

Customs Cat. No. 3357, new form, "Memorandum of entry," card, to be used as index of ultimate consignees. This index does not take the place of Customs Cat. No. 5059. The card is in the following form:

Customs Cat. No. 3357. Do not fold this card.

MEMORANDUM OF ENTRY.

Entry No. .....

Owner or ultimate consignee.....

Address of ultimate consignee.....

Vessel..... Date of arrival .....

Date entered ..... Kind of entry [1] .....

Entered by.....

Kind of merchandise .....

.....

[1] C., for consumption; W. H., for warehouse; F., for free; I. E., for informal; I. T. C., for goods entered for consumption from another port without appraisement there; I. T. W., for warehousing.

Customs Cat. Nos. 3389, 3391, 3393, and 3395 are abolished. Use customs Cat. No. 3385 (single importation) or customs Cat. No. 3387 (general), as the case may be.

Customs Cat. No. 3407 A and Cat. No. 3407 B, "Six months bond to produce certified invoices," are put up in books containing 50 and 25 bonds to a book, respectively.

Customs Cat. No. 3409 A and Cat. No. 3409 B, "Six months bond to produce certificates of exportation of American products," are put up in books containing 50 and 25 bonds to a book, respectively.

Customs Cat. No. 3441, new form, "Mail entry sheet." These sheets are prepared for a loose-leaf binder 16 by 10½ inches, punched on the 10½-inch side. Provision is made on the form for showing the amount of duty on mail entries and when the returns are made. The duty will be entered from the triplicate copies of the mail entries, the

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date and amount of payment to be checked from the original mail entries.

Customs Cat. No. 3449. The title has been changed to "Request to forward triplicate invoices and letter transmitting invoices." The forms will be furnished in tablets for the use of carbon paper, the request to be made in duplicate, and the duplicate copy returned to the officer making the request. The use of the "Letter transmitting triplicate invoices," customs Cat. No. 3451, will be discontinued.

Customs Cat. No. 3467, "Request of owner, consignee, or master to collector to take possession of goods remaining on board vessel," abolished.

Customs Cat. No. 3489, "Request to collector of customs to forward certificate of exportation," is abolished and combined with customs Cat. No. 4467.

Customs Cat. No. 3501, new form, "Free informal entry and permit on appraisement," for use at naval office ports. This form is as follows:

Customs Cat. No. 3501.

FREE INFORMAL ENTRY AND PERMIT ON APPRAISEMENT.

UNITED STATES CUSTOMS SERVICE,
*Collection district No.* ....

*To the inspector or storekeeper:*

Permission is hereby given for the delivery of the following-described goods and effects, imported by ..... in the ....., from ....., which are exempt from duty by law, viz:

| Marks. | Numbers. | Description of packages and contents. | By whom examined. |
|---|---|---|---|
| ..... | ..... | ..... | ..... |
| ..... | ..... | ..... | ..... |
| ..... | ..... | ..... | ..... |

Customhouse, ....., 191 .

.....
*Deputy Collector.*

.....
*Deputy Naval Officer.*

.....

[Perforated.]

FREE ENTRY OF GOODS AND EFFECTS INFORMALLY APPRAISED.

Arrived per ....., from ....., on ....., 191 .

| Marks. | Description of packages and contents. | Appraised value. | |
|---|---|---|---|
| ..... | ..... | ..... | ..... |

Entered by.....
Port of.....,191 .

Naval office entry. To be detached and retained by the cashier of the naval office.

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Customs Cat. No. 3503, new form, "Informal entry and permit on appraisement." For use at naval office ports. The form is as follows:

Customs Cat. No. 3503.

INFORMAL ENTRY AND PERMIT ON APPRAISEMENT.

UNITED STATES CUSTOMS SERVICE,
*Collection district No.* ....

*To the inspector or storekeeper:*

.....having paid duty as per statement on appraisement No. ....., on merchandise contained in the....., ..... master, from....., permission is hereby given to deliver the same, viz:

| Marks. | Numbers. | Description of packages and contents. | By whom examined. |
|---|---|---|---|
| ..... | ..... | ..... | ..... |
| ..... | ..... | ..... | ..... |
| ..... | ..... | ..... | ..... |

Customhouse, ....., 191..

.....
*Deputy Collector.*

.....
*Deputy Naval Officer.*

.....

[Perforated.]

ENTRY OF GOODS AND EFFECTS INFORMALLY APPRAISED.

Arrived per....., from....., on ....., 191..

| Marks. | Numbers. | Description of packages and contents. | Appraised. | |
|---|---|---|---|---|
| ..... | ..... | ..... | ..... | ..... |
| ..... | ..... | ..... | ..... | ..... |
| ..... | ..... | ..... | ..... | ..... |

Entered by .....,
Port of ....., 191...

Naval office entry. To be detached and retained by the cashier of the naval office.

Customs Cat. No. 3505, new form, "Daily sheet register of entries," for use at naval office ports. The sheet is 12 by 19 inches and in the following form:

Customs Cat. No. 3505.

DAILY SHEET REGISTER OF ENTRIES RECEIVED AT ENTRY CLERKS' DESKS.

*Collection district No.* .....
CUSTOMHOUSE, ....., 191..

| | | | | | | | | | Time. |
|---|---|---|---|---|---|---|---|---|---|

(Numbers from 1 to 1,000 printed in this space.)

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Customs Cat. No. 3591, "Amendment to warehouse entry—Increased duty—Refunds." To be attached to entry papers to show amount of increased duties to be paid to or amount of refunds to be made to importers. The form is as follows:

Customs Cat. No. 3591. Bond No. .....

AMENDMENT TO WAREHOUSE ENTRY—INCREASE DUTY—REFUNDS.

UNITED STATES CUSTOMS SERVICE,
COLLECTION DISTRICT NO. .....,
PORT OF .....
....., *191*...

Imported by.....,
in the ....., from.....,
arrived ....., 191...

| | | | |
|---|---|---|---|
| Liquidated duty..... | $..... | Duty paid..... | $..... |
| Duty paid..... | ..... | Liquidated duty..... | ..... |
| due..... | ..... | Refund..... | ..... |
| Date paid ....., 191... | | Date paid ....., 191... | |

Customs Cat. No. 3727, "Storekeeper's receipt for goods transferred from warehouse to warehouse," abolished. Use Cat. No. 6043 A or Cat. No. 6043 B.

Customs Cat. No. 3733, "Application and permit to deliver samples of goods in warehouse," abolished.

Customs Cat. No. 3737, "Rewarehouse withdrawal delivery permit, duty paid," abolished. Use customs Cat. No. 3731.

Customs Cat. No. 3785, new form, "Certificate of lading for export of goods withdrawn for transportation and exportation." This form will be used as set forth in article 694, Customs Regulations of 1915. The form is as follows:

Customs Cat. No. 3785.

CERTIFICATE OF LADING FOR EXPORT OF GOODS WITHDRAWN FOR TRANSPORTATION AND EXPORTATION.

UNITED STATES CUSTOMS SERVICE,
COLLECTION DISTRICT NO. .....,
PORT OF .....
....., *191*...

This is to certify that the merchandise described below, which was withdrawn from warehouse at ....., for transportation and exportation at this port (W. H. entry No. ....., bond No. .....), was duly laden on board the ....., and the said merchandise appears on the vessel's outward manifest.

| Marks. | Numbers. | Packages and contents. | Remarks. |
|---|---|---|---|
| ..... | ..... | ..... | ..... |
| ..... | ..... | ..... | ..... |

.....
*Collector of Customs.*

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Customs Cat. No. 3819, new form, post card, requesting return of mail copy of entry. The card is in the following form:

Customs Cat. No. 3819.

UNITED STATES CUSTOMS SERVICE,
*Collection District No. .., Port of* .....,
....., *191*...

*Collector of Customs.*

.....

SIR: Kindly return to this office for cancellation mail copy and accompanying papers of ....., entry No. ....., from this port, covering .....
.....

Respectfully,

.....
*Collector.*

Customs Cat. No. 3847, "Inspector's receipt for goods received for exportation," abolished. Use customs Cat. No. 6043 A or Cat. No. 6043 B.

Customs Cat. No. 3859, "Report of baggage shipped in bond under card manifest," abolished. Use Cat. No. 6055.

Customs Cat. No. 3861, new form, "Report of irregular (or short) delivery of bonded merchandise." This report will be made in duplicate, by carbon paper. A separate report will be made for each entry. The officer to whom it is sent will return one copy with his report. The form is as follows:

Customs Cat. No. 3861.

REPORT OF IRREGULAR (OR SHORT) DELIVERY OF BONDED MERCHANDISE.

UNITED STATES CUSTOMS SERVICE,
*Collection District No. ..,*
....., *191*...

*The Collector of Customs,*

.....

SIR: I have to report the irregular (or short) delivery of the merchandise covered by ....., entry No. ....., viz:

| Character of merchandise. | Quantity imported. | Quantity delivered or exported. | Shortage. | Value of merchandise not delivered or exported. | Duty. |
|---|---|---|---|---|---|
| ..... | ..... | ..... | ..... | ..... | ..... |
| ..... | ..... | ..... | ..... | ..... | ..... |

The seals were ..... intact.
(or not)

The condition of the particular container or containers from which shortage occurred, as noted by the inspector, was as follows (T. D. 32280 and T. D. 32731):

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.....,
*Collector of Customs.*

REPORT OF COLLECTOR AT PORT OF ENTRY.

UNITED STATES CUSTOMS SERVICE,
*Collection district No.* ....., *Port of* .....,
....., *191* .

*The honorable the Secretary of the Treasury.*

SIR: Referring to the above, I have the honor to report as follows (T. D. 32280):

.....
.....
.....
.....

.....,
*Collector of Customs.*

Customs Cat. No. 4293, "Certified statement of excess duty exacted," will be furnished in two sizes, Cat. No. 4293 A, 10½ x 16 inches, and Cat. No. 4293 B, 10½ x 8 inches.

Customs Cat. No. 4303, "Importer's notice of appeal to reappraisement." This form has been given Cat. No. 7547, and will be sold as other blanks for sale.

Customs Cat. No. 4325, new form. "Notice of collector claiming reappraisement by the United States general appraiser," as follows:

Customs Cat. No. 4325.

Appeal No. .....

NOTICE OF COLLECTOR OF CUSTOMS CLAIMING REAPPRAISEMENT BY A UNITED STATES GENERAL APPRAISER.

[This notice must be forwarded to the United States general appraiser *within 60 days* from date of appraisement. T. D. 35154.]

DISTRICT OF .....,
*Port of* .....,
....., *191*...

Invoice No. .....
Entry No. .....
*To the United States general appraiser, New York, N. Y.*

SIR: I hereby appeal from the appraisement by the United States appraiser, and request that a reappraisement be made by a general appraiser in accordance with the law, upon certain .....
.....
.....
imported by .....
in the steamship ....., entered .....
A hearing is desired at .....

Respectfully,

.....,
*Collector.*

Requested by:
Appraiser .....

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Customs Cat. No. 4327, new form, "Notice of collector claiming rereappraisement by Board of United States General Appraisers," as follows:

Customs Cat. No. 4327. Appeal No. .....

NOTICE OF COLLECTOR CLAIMING REREAPPRAISEMENT BY BOARD OF UNITED STATES GENERAL APPRAISERS.

[This notice must be forwarded to the Board of United States General Appraisers *within 10 days* from date of reappraisement. T. D. 35154.]

Invoice No. .....
Entry No. .....

DISTRICT OF .....,
*Port of* .....,
..... 191...

*To the Board of United States General Appraisers, New York, N. Y.*

GENTLEMEN: I hereby appeal from the reappraisement by the United States general appraiser, and request that rereappraisement be made by a Board of United States General Appraisers in accordance with the law, upon certain.....
.....
.....
imported by .....
in the steamship ....., entered .....
A hearing is desired at .....

Respectfully,

.....,
*Collector.*

Requested by .....

Customs Cat. No. 4467. Title changed to "Request for and certificate of exportation covering domestic merchandise returned from abroad" and combined with Customs Cat. No. 3489 (abolished).

Customs Cat. No. 4497, new form, "Record of importations against which exportation for benefit of drawback may be charged" (blue card), for use at naval office ports only. The form is as follows:

Vessel ..... From .....
Port of importation.....
Materials .....
Importer ..... Delivered to .....

| Entry No. | Date. | Quantity and value. | Rate. | Drawback entry No. | Quantity. | Drawback entry No. | Quantity. |
|---|---|---|---|---|---|---|---|
| | | | | | | | |
| ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... |

Treasury Department, Customs Cat. No. 4497.

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Customs Cat. No. 4499, new form, "Record of certificates of manufacture and delivery" (white card), for use at naval office ports only. The form is as follows:

Manufacturer..... Date of manufacture.....
Certificate of manufacture No.....
Imported materials..... Rate of duty.....
Delivered to.....

| Quantity and description of manufactured article. | Rate. | Drawback entry No. | Quantity. | Drawback entry No. | Quantity. |
|---|---|---|---|---|---|
| | | | | | |
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Treasury Department, Customs Cat. No. 4499.

Customs Cat. No. 4501, "Record of drawback on distilled spirits" (yellow card), for use at naval office ports only. The form is as follows

Name of distiller.....Internal revenue district.....
Delivered to.....

| Tax-paid certificate No. | Serial number package. | Serial number tax-paid stamp. | Date of payment. | Taxable gallons. | Degree of proof. | Rate of tax. | Drawback entry No. | Quantity. | Drawback entry No. | Quantity. |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | |
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| | | | | | | | | | | |

Treasury Department, Customs Cat. No. 4501.

Customs Cat. No. 4511, "Certificate of exportation of merchandise for drawback (inspection)." This blank will be furnished in book form, the certificate to be made in duplicate with carbon paper, one copy to be retained in the book as the office record.

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Customs Cat. No. 4519, "Certificate of exportation (tobacco, snuff, or cigars) under internal-revenue acts," has been internal-revenue form No. 690.

Customs Cat. No. 4521, "Entry for exportation under internal-revenue laws," has been given internal-revenue form No. 691.

Customs Cat. No. 4523, "Certificate of exportation," has been given internal-revenue form No. 692.

Customs Cat. No. 4525, "Bond for exportation of distilled spirits," has been given internal-revenue form No. 693.

Customs Cat. No. 4527, "Order for inspection, etc., of spirits exported without the payment of internal-revenue tax," has been given internal-revenue form No. 694.

Customs Cat. No. 4529, "Customs gauger's certificate of distilled spirits for export," has been given internal-revenue form No. 695.

Requisitions for the six foregoing forms should be addressed to the Commissioner of Internal Revenue, Washington, D. C.

Customs Cat. No. 4605, "Appraisement of seized goods by special appraisers," is abolished. Cat. No. 4603, as revised, will be used.

Customs Cat. No. 4811, "Monthly estimate for funds for Revenue-Cutter Service," has been given a Coast Guard form number. Requisitions for this form should be addressed to the Captain Commandant, Coast Guard, Washington, D. C.

Customs Cat. No. 4821, "List of customs fees at ports other than those on the northern, northeastern, and northwestern frontiers" (card), is abolished and combined with Cat. No. 4823.

Customs Cat. No. 4823, title changed to "Customs fee list at all ports."

Customs Cat. No. 4829, "Memorandum fee and duty ticket." This form will be furnished both in loose sheets, customs Cat. No. 4829 A, and in tablets, customs Cat. No. 4829 B. The tablets will be used at naval office ports only. At such ports where receipt is required for customs collections the form will be made in triplicate, with carbon paper, and one copy stamped "Paid" by the cashier, and issued as a receipt in lieu of Cat. No. 4839, "Receipt for dues and fees."

Customs Cat. No. 4835, "Informal entry and receipt." This form will be used as a receipt for duties on articles in passengers' baggage where the dutiable value does not exceed $500. It will also be used for importations of coin and currency, irrespective of value, for duties collected on small importations at frontier and interior ports, where the duty does not exceed $10, for merchandise unconditionally free, and for American goods returned, household goods, and other similar importations conditionally free where the value does not exceed $100.

Customs Cat. No. 4839, "Receipts for dues and fees." The use of this form at naval office ports is discontinued. See Cat. No. 4829.



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Customs Cat. No. 4869, "Express receipts and waybills," is abolished.

Customs Cat. No. 4943, "Account current, special disbursing agent," has been abolished as a customs form. The form will hereafter be furnished by the Coast Guard. Customs officers will make requisitions for the forms needed upon the captain commandant, Coast Guard, Washington, D. C.

Customs Cat. No. 5517, new form, "Warehouse" (card), for use at naval office ports only, to take the place of Cat. No. 5515, "Warehouse ledger." The form is as follows:

Customs Cat. No. 5517.

Bond No. ..... Warehouse..... ..... Importer.....
Date of import.....

| Merchandise. | Duty. |
|---|---|
| ..... | ..... |
| ..... | ..... |
| ..... | ..... |

WITHDRAWALS.

| Date. | Packages. | Duty. |
|---|---|---|
| ..... | ..... | ..... |
| ..... | ..... | ..... |
| ..... | ..... | ..... |

Customs Cat. No. 5935, "Inspector's return of bonded merchandise unladen." The sheet form Cat. No. 5935 is abolished. The card form (Cat. No. 5935 A) will be given Cat. No. 5935. It has been amended so as to provide "Number of packages received." Carriers will be required to furnish a manifest for each immediate transportation entry. Only one entry will therefore be shown on each manifest. A manifest will also be furnished for each car where the goods under one entry are forwarded in two or more cars.

Customs Cat. No. 5949, "Inspector's receipt—I. T. goods," abolished. Cat. No. 6043 A or Cat. No. 6043 B will be used.

Customs Cat. No. 5985, "Weigher's return," will be furnished in two sizes—Cat. No. 5985 A, 8½ by 11 inches, and Cat. No. 5985 B, 8½ by 7 inches.

Customs Cat. No. 5991, "Weigher's return of salt," abolished for reasons given in T. D. 35200 of March 9, 1915.

Customs Cat. No. 6023, "Customs gauger's return for internal-revenue officers of spirits regauged for export," will be furnished in two sizes and given internal-revenue form No. 696 A and No. 696 B.

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Requisition therefor should be addressed to the Commissioner of Internal Revenue, Washington, D. C.

Customs Cat. No. 6043, "Storekeeper's receipt—Warehouse order," abolished. New forms No. 6043 A and No. 6043 B will be used as prescribed in article 828, Customs Regulations of 1915.

Customs Cat. No. 6045, "Storekeeper's receipt—General order," is abolished. Use Cat. No. 6043 A or Cat. No. 6043 B.

Customs Cat. No. 6049, "Storekeeper's receipt—Public store," is abolished. Use Cat. No. 6043 A or Cat. No. 6043 B.

Customs Cat. No. 6051, "Storekeeper's receipt—Appraiser's store," abolished. Use Cat. No. 6043 A or Cat. No. 6043 B.

Customs Cat. No. 6055, "Report of baggage forwarded in bond." This report will be made in duplicate with carbon paper, the duplicate retained in the back as the office record.

Customs Cat. No. 6417, new form, "Summary of entered value, examination, and appraisement," is prescribed in article 563, Customs Regulations of 1915, and will be used by the entry clerk to certify the entered value, etc., and by appraising officers in making returns on invoices passed by them. The appraising officer will make return on each invoice; the examiner will insert in column 1 the marks on the package, in column 2 the numbers, in column 3 indicate whether or not the rate or quantity has been changed, in column 4 whether or not the value is correct, in column 5 the date of examination, in column 6 the examiner's initials, and in column 7 any remarks or special report. The form is as follows:

Customs Cat. No. 6417.

SUMMARY OF ENTERED VALUE, EXAMINATION, AND APPRAISEMENT.

[To be attached to invoice.]

| UNITED STATES CUSTOMS SERVICE. | FOR EXAMINATION. |
|---|---|
| *Collection district No.* ....<br>*Port of*.....<br>I hereby certify that this invoice No. .... was presented to-day on entry.<br>Invoice value..... .....<br>Less nondutiable charges..... .....<br>.....<br>Add dutiable charges..... .....<br>.....<br>Added or deducted to make market value..... .....<br>Entered value..... .....<br>Vessel or carrier..... .....<br>Warehouse..... .....<br>..... | .....<br>*Deputy collector.* |

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APPRAISER'S RETURN.

[Merchandise as noted.]

| 1 Marks on packages. | 2 Numbers on packages. | 3 Return of rate and quantity. | 4 Return of value. | 5 Date of return. | 6 Examiner's initials. | 7 Remarks. |
|---|---|---|---|---|---|---|
| | | | | | | |
| | | | | | | |

Approved: ..... *Assistant Appraiser.*

Approved: ..... *Appraiser.*

Customs Cat. No. 7535, "Coasting manifest." This form has been changed. The master's oaths have been printed on the face of the blank, and the permit to proceed to another port has been eliminated therefrom. Blank permits should be obtained, by requisition, from the Department of Commerce, Commerce form Cat. No. 1382.

Customs Cat. No. 7543, "Entry for immediate transportation in bond without appraisement." This form will be sold as other blanks for sale.

Customs Cat. No. 7545, "Entry for warehouse and transportation in bond for Porto Rico or Hawaii." This form will be sold as other blanks for sale.

Customs Cat. No. 7547, "Importer's notice of appeal to reappraisement." Formerly Cat. No. 4303. This form will be sold as other blanks for sale.

(93120.) W. G. McAdoo, *Secretary of the Treasury.*

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(T. D. 36557—G. A. 7934.)

*Glove leather.*

Chamois skins prepared from the flesh side of split sheepskins, but submitted to processes additional to those to which chamois skins are submitted for ordinary commercial purposes, and which not only specially fit them for use as glove leather but make them unsuitable practically and commercially for the ordinary uses of chamois skins, *held* to be glove leather and subject to duty at the rate of 10 per cent ad valorem under the *eo nomine* provision therefor in paragraph 359, tariff act of 1913, that provision being narrower and more specific as applied to skins so prepared than the *eo nomine* provision for chamois skins in the same paragraph.—G. A. 7425 (T. D. 33143) and G. A. 7621 (T. D. 34861) cited.

United States General Appraisers, New York, July 5, 1916.

In the matter of protests 751746, etc., of Wm. H. Stiner & Son against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

*Strauss & Hedges* (*J. F. Strauss* of counsel) for the importers.

*Bert Hanson*, Assistant Attorney General (*Chas. D. Lawrence*, special attorney), for the United States.

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Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers; Sullivan, G. A., not participating).

McClelland, *General Appraiser:* The merchandise the classification of which is here in controversy is described on the invoices as glove leather, natural dole, and white dole. It was all assessed with duty at the rate of 15 per cent ad valorem under paragraph 359 of the tariff act of 1913 as " chamois skins," and is claimed in the protests to be entitled to free entry under paragraph 530, or in the alternative dutiable at only 10 per cent under paragraph 359 as "glove leather." The claim for free entry is evidently without merit, and is therefore overruled.

Paragraph 359 reads:

Chamois skins, 15 per centum ad valorem, pianoforte, pianoforte action, enameled upholstery leather, and glove leathers, 10 per centum ad valorem.

Thus, we find both chamois skins and glove leather provided for *eo nomine*, and it therefore becomes a question under the proof submitted which is the narrower and more specific provision as applied to these skins. Exhibit 1 represents such of the skins as are described glove leather or white dole, and Exhibit 2 represents those described as natural. There are also in the case three illustrative exhibits, A, B, and C. The undisputed testimony on behalf of protestants shows, as to these illustrative samples, that A represents what is known as a crust chamois, and B represents A after having been subjected to additional processes to specially prepare it for use in the making of gloves, and C represents a chamois skin specially prepared for the drug trade.

The chamois skin is made from the flesh side of a split sheepskin. To bring it to the condition represented by Exhibit A it is pickled and oil tanned. In G. A. 7425 (T. D. 33143) we made the following findings of fact, which have not been unsettled:

First. That crust chamois are finished in the sense of being ready for use in cleaning automobiles, carriages, harness, and windows.

Second. That such skins are known commercially as chamois skins and are bought and sold as such under that name.

It was accordingly held that such skins were properly classified as chamois skins and subject to duty at the rate of 20 per cent ad valorem under the *eo nomine* provision therefor in paragraph 451 of the tariff act of 1909.

In addition to the treatment to which the skin was subjected to bring it to the condition of Exhibit A it must, among other processes be fat liquored, sueded, and knee staked.

It is shown by undisputed affirmative testimony that neither the crust chamois (Exhibit A) nor the drug-trade chamois (Exhibit C) is suitable for glove leather, and could not, therefore, be practically or commercially used for making gloves. It is also shown that the

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skins involved have been prepared for making gloves by special treatment to which chamois skins intended for other purposes are not subjected, and that by reason of such special treatment they are not adaptable to any of the other uses to which chamois skins are customarily put. In G. A. 7621 (T. D. 34861), in passing upon the question of whether certain so-called doeskin, a form of chamois, specially prepared for the material out of which to make chamois gloves, was or was not chamois skins, we said:

> It is our view that if a leather has been especially prepared, either by original tanning or by peculiar dressing and finish, to make it especially useful for making gloves and consequently unfit practically or commercially for any other use, it must be classified as glove leather and take duty accordingly, regardless of whether it looks like some other kind of leather or may, in exceptional instances, be used for other purposes than glove making.

The issue there was very similar to that in the case at bar, and there is equally good reason for holding that, by reason of these skins being so treated as to make them suitable in a commercial sense only for glove making, they should be classified as glove leather and take duty accordingly, and we so hold.

The foregoing applies to all of the merchandise covered by these protests except that covered by entry number 77118, as to which, on the testimony of the official examiner who passed it, we find that it is in all respects similar to that covered by G. A. 7621, following which we hold the merchandise to be glove leather.

The protest claims for duty at the 10 per cent rate are sustained as to all of the merchandise involved. Each decision of the collector is reversed accordingly.

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## (T. D. 36558—G. A. 7935.)

*Duty on cases.*

METHOD OF ASCERTAINING DUTY UPON CARTONS, CASES, ETC.

Paragraph R of section 3, act of 1913, provides for the assessment of duty on the containers of all ad valorem merchandise, but it does not contemplate the assessment of duty at the value of the contents per pound, yard, or unit of any kind that the merchandise is found to be worth, but upon the actual value of the cartons, packages, etc. The collector should ascertain the total value of the merchandise as stated by the appraiser, and to that value add the value of the cartons, cases, etc., and upon the amount thus ascertained assess duty at the rate provided by law.

United States General Appraisers, New York, July 7, 1916.

In the matter of protest 794857 of Suzarte & Whitney against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

*Strauss & Hedges* (*John Francis Strauss* of counsel) for the importers.

*Bert Hanson*, Assistant Attorney General (*Samuel Isenschmid*, special attorney), for the United States.

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Before Board 3 (WAITE and HAY, General Appraisers).

HAY, *General Appraiser:* This is a protest against the assessment of duty on certain balsam of copaiba upon the unit value as found by the appraiser and the gross weight as returned by the United States weigher. No complaint is made by the importers against the classification of the commodity or the basis of valuation by the appraiser, but it is claimed that the collector has assessed duty upon the weight of the boxes, cartons, cans, etc., containing the commodity, at the value provided for balsam of copaiba in paragraph 9, act of 1913. The weigher found 12,720 pounds to be the gross weight of the 135 boxes which constituted the importation. Upon this gross weight duty was assessed at 10 per cent ad valorem, as provided by paragraph 9, upon the value as stated by the appraiser.

Under paragraph 9 it was only the balsam of copaiba that was dutiable at 10 per cent ad valorem. Paragraph R of section 3, act of 1913, provides for the assessment of duty on the containers of all ad valorem merchandise, but it does not contemplate the assessment of duty at the value of the contents per pound, yard, or unit of any kind that the merchandise is found to be worth, but upon the actual value of the cartons, packages, etc. United States *v.* Spingarn Bros. (5 Ct. Cust. Appls., 2; T. D. 34002); Binney & Smith Co.'s case, G. A. 7595 (T. D. 34726); and J. E. Bates's case, Abstract 38066. Under paragraph R the coverings are made dutiable at the same rate as their contents, but their value is not necessarily the same. The value of the cartons, cases, crates, sacks, etc., may be more or it may be less than the value of the commodity they contain. The collector contends that it is impracticable to get at the exact tare of the merchandise. The testimony and the weigher's return show that the United States weigher found the outside wooden boxes, or cases, to weigh 1,665 pounds, and an employee of the importers who was called as a witness, and whose testimony stands undisputed, testified that the weight of all of the inside containers after emptying out the balsam of copaiba was 809 pounds. To ascertain the net weight, therefore, of the balsam of copaiba, 1,665 pounds and 809 pounds, making a total of 2,474 pounds, should be deducted from the gross weight of the merchandise as found by the weigher. Thus it will be seen that there were 10,246 pounds of balsam of copaiba imported. The collector should ascertain the total value of this balsam of copaiba as stated by the appraiser, and to that total value add the value of the cans and outside packages, and upon the amount thus obtained assess duty at 10 per cent ad valorem under paragraph 9.

The protest is therefore sustained and the collector directed to reliquidate the entry in accordance herewith.

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*Abstracts of decisions of the Board of General Appraisers.*

*Board 1*—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

BEFORE BOARD 1, JULY 5, 1916.

**No. 39967.**—Protest 797923 of American Express Co. (New York).

GLOVE LEATHER.—Glove leather classified at 10 per cent ad valorem under paragraph 359, tariff act of 1913, is claimed free of duty under paragraph 530.

Opinion by MCCLELLAND, G. A. It was found that the merchandise consists of alum-tanned real French kid leather designed for and adapted to no other uses than the manufacture of gloves. It was held properly classified under paragraph 359.

**No. 39968.**—Protests 774237, etc., of S. Stern (New York).

FEATHERS.—Merchandise classified as ornamental feathers, manufactured, at 60 per cent ad valorem under paragraph 347, tariff act of 1913, is claimed dutiable at 40 per cent under the same paragraph.

Opinion by MCCLELLAND, G. A. The feathers were found advanced in value beyond the crude state but not suitable for use in their imported condition as millinery ornaments. They were held dutiable at 40 per cent under paragraph 347, as claimed.

**No. 39969.**—Protests 768737, etc., of Stone & Downer Co. (Boston).

SLASHER FLANNEL—WOOL CLOTH.

BROWN, *General Appraiser:* The issue raised by these protests is whether certain fabrics are dutiable as wool cloth under paragraph 288, act of 1913, at 35 per cent ad valorem, as classified, or whether they are dutiable as flannels under paragraph 289 at 25 per cent ad valorem, as claimed. Said paragraph 289 reads:

> Blankets and flannels, composed wholly or in chief value of wool, 25 per centum ad valorem; flannels composed wholly or in chief value of wool, valued at above 50 cents per pound, 30 per centum ad valorem.

The following facts appear from the testimony. The merchandise is described on the invoices as "flannel," "superfine flannel," and as "roller flannel." It is sold to cotton mills and is used on machinery in the mills, chiefly on sizing machines in what is called the slashing machine. The cloth is wound around two cylinders of the machine and the yarn passes between the cylinders which remove the excess moisture and sizing from the yarn.

While the witnesses testified that it is known in the trade as slasher flannel, they admitted that the term generally used is "slasher" with some word descriptive of the quality, as superfine slasher, coarse slasher, etc.

The importers waive claim on item described as No. 11 roller flannel, on invoice 1826, protest 769484.

The testimony is legally insufficient to establish a definite, uniform, and general commercial designation of the goods here in question as "flannels."

From the record and an examination of the samples we are of the opinion that the fabrics in question are not "flannels" within the common and ordinary meaning of that term. We think that Congress in enacting the provision for flannels was dealing primarily with flannels for underwear and perhaps for certain other garments, and did not have in mind goods, even of a flannel texture, which have no relation to clothing but which are solely used in connection with machinery.

In G. A. 7919 (T. D. 36486), covering protest 765909, decided June 9, 1916, we held that Congress in using the term "blankets" in this paragraph did not mean to include

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so-called blankets used in connection with machinery, but only blankets used for bodily protection—that is, to keep out the cold.

That decision is in harmony with the conclusion arrived at in this case.

The protests are therefore overruled as to said merchandise.

Protest 776910 also claims 5 per cent discount under section 4, paragraph J, subsection 7, but no evidence was introduced in support of this claim, and it is also overruled.

**No. 39970.**—Protests 752037, etc., of Stone & Downer Co. (Boston).

CLEARER CLOTH—FLANNELS.—Slasher flannel and clearer cloth classified as wool cloth at 35 per cent ad valorem under paragraph 288, tariff act of 1913, are claimed dutiable as flannels at 25 per cent under paragraph 289.

Opinion by BROWN, G. A. The slasher flannel is used in cotton mills on slasher machines, and the clearer cloth on spinning machinery to catch the loose fibers and clear them away from the yarns during the spinning process. The fabrics in question were found not to come within the meaning of the term "flannels." It was held that it is probable that Congress in enacting the flannel provision did not have in mind fabrics which, although of flannel texture, have no relation to clothing, but are used entirely in connection with machinery. The classification as wool cloth under paragraph 288 was affirmed.

**No. 39971.**—Protest 797267 of Harris & Schulgasser (New York).

ALPACA COAT LININGS.—Alpaca coat linings classified as cloth in chief value of the hair of the alpaca at 40 per cent ad valorem under paragraph 308, tariff act of 1913, are claimed dutiable at 35 per cent under paragraph 288 or 290 as wool cloth or wool coat linings.

Opinion by BROWN, G. A. On the authority of G. A. 7741 (T. D. 35541), affirmed in Rosenberg *v.* United States (7 Ct. Cust. Appls., —; T. D. 36510), the protest was overruled.

**No. 39972.**—Protest 796184 of Sylvester & Levy (New York).

WOOL CLOTH.—Merchandise classified as cloth in chief value of wool at 35 per cent ad valorem under paragraph 288 is claimed to be cloth in chief value of cattle hair, dutiable at 25 per cent under the same paragraph.

Opinion by BROWN, G. A. Protest unsupported; overruled.

**No. 39973.**—Protest 778710-56298 of R. B. Boak & Co. (Chicago).

FISH, BONED.—Herrings with the head and tail cut off and the side of the fish trimmed off, with all the bones taken out; and fish with the head and tail cut off, split, and the backbone removed, the side or rib bones remaining in the fish, classified as fish, skinned or boned, at three-fourths of 1 cent per pound under paragraph 216, tariff act of 1913, are claimed free of duty as fish not specially provided for under paragraph 483

Opinion by BROWN, G. A. The herrings with all the bones taken out and trimmed were held properly classified as fish, skinned or boned, under paragraph 216. The fish with the head and tail cut off, split, and the backbone removed, the side or rib bones remaining in the fish, was found not to be fish, boned, and was held free of duty under paragraph 483, as claimed. Woodward *v.* United States (6 Ct. Cust. Appls., 372; T. D. 35918) followed.

**No. 39974.**—Protest 796698-58434 of P. V. Bright Co. (Chicago).

FISH, BONED.—Salmon classified as boned at three-fourths of 1 cent per pound under paragraph 216, tariff act of 1913, was claimed free of duty under paragraph 483.

Opinion by BROWN, G. A. On the authority of Woodward *v.* United States (6 Ct. Cust. Appls., 372; T. D. 35918) the salmon in question was found not boned within the meaning of paragraph 216 and held free of duty under paragraph 483.

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**No. 39975.**—Protests 778580, etc., of Tokstad-Burger Co. (San Francisco).

FISH IN TINS.—Merchandise classified as fish in tins at 15 per cent ad valorem under paragraph 216, tariff act of 1913, is claimed dutiable under the provision in the same paragraph for fish, skinned or boned.

Opinion by BROWN, G. A. On the authority of Tokstad-Burger Co. *v.* United States (6 Ct. Cust. Appls., 441; T. D. 35981), affirming G. A. 7720 (T. D. 35365), the provision for fish in tins was held to control over that for fish, skinned or boned. Protests overruled.

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BEFORE BOARD 1, JULY 7, 1916.

**No. 39976.**—Protest 780822 of Innis, Speiden & Co. (New York).

DEXTRIN—BRITISH GUM.

McCLELLAND, *General Appraiser:* The appraiser in his special report on the protest in this case states that "the merchandise consists of dextrin, which, according to the chemist's report, is derived from potato starch." Duty was assessed on the merchandise at 1¼ cents per pound under paragraph 36 of the tariff act of 1913, and the protest claim is that duty should have been assessed at only three-fourths of 1 cent per pound under the last clause of the same paragraph.

The only witness called for the importers, a woman in charge of the particular department of the importing firm which handles this and kindred kinds of merchandise, with extended experience and unusual comprehension of the various kinds of dextrins and other materials adapted to similar uses, is decided in her opinion that the merchandise represented by Exhibit 1 (the official sample) is not dextrin, but an article known as "leiogomme," similar in all material respects to British gum, except as to color, and that it is in fact bought and sold as British gum; that neither leiogomme nor British gum can be used for the purposes for which dextrins are used in the textile industry. Another distinction which this witness makes, which is not contradicted, is that dextrins when dissolved are adhesive, while the merchandise under consideration is not adhesive.

But one kind of dextrin is provided for in paragraph 36, supra, namely, "dextrin, made from potato starch or potato flour," so that therefore, unless the article under consideration is dextrin made from either potato starch or potato flour, it was not properly classified by the collector. The provision in the paragraph which follows, and the one under which claim is made, reads: "Dextrin, not otherwise provided for, burnt starch or British gum, dextrin substitutes, and soluble or chemically treated starch, three-fourths of 1 cent per pound."

The Government evidently relies upon the report of the chemist and the testimony of the chemist who made the analysis. In his report (Exhibit 2) that officer states that the merchandise is derived from potato starch *and is composed mainly of dextrin.* An article which is a derivative of a substance may be very different from another article which is made of that substance, and there is no apparent explanation of the chemist's statement that this so-called leiogomme is composed mainly of dextrin. It would seem as though the article is a mixture no longer recognized as dextrin.

We think on the record as it stands that the collector's classification of this article as being made from potato starch or potato flour is erroneous, and that it should have been classified under the last clause of paragraph 36 and assessed with duty at three-fourths of 1 cent per pound, as claimed.

The decision of the collector is reversed accordingly.

**No. 39977.**—Protest 771622 of Otto Gerdau Co. (New York).

WHIP REEDS.—Rattan reeds classified as chair reeds at 10 per cent ad valorem under paragraph 173, tariff act of 1913, are claimed entitled to free entry under paragraph 648.

Opinion by McCLELLAND, G. A. The reeds in question found to be 14 millimeters in diameter were held free of duty as whip reeds under paragraph 648, as claimed.

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**No. 39978.**—Protests 761652, etc., of Lamont, Corliss & Co. et al. (New York).

POWDERED TALC.—Powdered talc scented or perfumed, classified as a toilet preparation at 60 per cent ad valorem under paragraph 48, tariff act of 1913, is claimed dutiable as talcum powder at 15 per cent under paragraph 69.

Opinion by MCCLELLAND, G. A. On the authority of Roger *v.* United States (7 Ct. Cust. Appls., —; T. D. 36424), affirming G. A. 7800 (T. D. 35844), the powdered talc in question was held properly classified as a toliet preparation under paragraph 48.

**No. 39979.**—Protest 803232 of B. R. Anderson & Co. (Seattle).

TILES.—The appraiser reports the merchandise in question to be red ferrolite flooring tiles. They were classified at 5 cents per square foot under paragraph 72, tariff act of 1913, and are claimed dutiable at 1½ cents per square foot under another provision of the same paragraph.

Opinion by MCCLELLAND, G. A. Protest unsupported; overruled.

**No. 39980.**—Protests 799142, etc., of Butler Bros. et al. (New York, etc.).

WOOD SHAVING ROPINGS—CHIP.—These protests relate to wood shaving ropings composed of chip attached to cotton threads, classified as a manufacture of chip at 20 per cent ad valorem under paragraph 368, tariff act of 1913.

Opinion by MCCLELLAND, G. A. On the authority of United States *v.* Kronfeld (7 Ct. Cust. Appls., —; T. D. 36425) the wood shaving ropings were held properly classified under paragraph 368.

**No. 39981.**—Protests 797972, etc., of D. J. Hanscom et al. (Seattle).

GRASS FURNITURE.—Furniture classified as manufactures of grass at 25 per cent ad valorem under paragraph 368, tariff act of 1913, is claimed dutiable as furniture of wood at 15 per cent under paragraph 176.

Opinion by MCCLELLAND, G. A. On the authority of Abstract 39130 the furniture in question was held dutiable under paragraph 176, as claimed.

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BEFORE BOARD 2, JULY 7, 1916.

**No. 39982.**—Protest 802665 of W. E. Huguenin and protest 800667 of Manasseh Levy & Co. (New York).

TIMERS.—The appraiser reports the merchandise to be watches which record the time of day and also contain mechanism and dial for timing speed contests, etc. They were classified as watches at 30 per cent ad valorem under paragraph 161, tariff act of 1913, and are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinions by FISCHER, G. A. Protests unsupported; overruled. G. A. 7730 (T. D. 35460) cited.

**No. 39983.**—Protests 801601, etc., of A. Wittnauer Co. et al. (New York).

TIMERS.—Stop watches designed for timing horse races and other speed contests, etc., classified as watches at 30 per cent ad valorem under paragraph 161, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by FISCHER, G. A. On the report of the appraiser certain of the stop watches in question were held dutiable under paragraph 167, as claimed. G. A. 7827 (T. D. 35971) and G. A. 7730 (T. D. 35460) followed.

**No. 39984.**—Protest 802760 of Hipp, Didisheim & Bro. (New York).

PROTEST WITHOUT MERIT.—It is claimed here that certain timers classified at 30 per cent ad valorem under paragraph 161, tariff act of 1913, are dutiable at 20 per cent under paragraph 167.

Opinion by FISCHER, G. A. From the record it appears that no timers were classified at 30 per cent. Protest without merit; overruled.

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**No. 39985.**—Protest 801606 of Markt & Hammacher Co. (New York).

HOLLOW WARE.—Merchandise classified as enameled steel hollow ware at 25 per cent ad valorem under paragraph 134, tariff act of 1913, is claimed dutiable as manufactures of steel at 20 per cent under paragraph 167.

Opinion by FISCHER, G. A. Pot covers and ladles of steel enameled with vitreous glasses were held dutiable under paragraph 167, as claimed. Abstract 38060 followed. Protest sustained in part.

**No. 39986.**—Protests 763477, etc., of Dreicer & Co. (New York).

SILK HAND BAGS.—These protests relate to fancy hand bags of silk in part of ornaments, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913.

Opinion by HOWELL, G. A. On the authority of Abstract 37624, affirmed in Morimura *v.* United States (6 Ct. Cust. Appls., 475; T. D. 36119), the hand bags in question were held properly classified under paragraph 358.

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## (T. D. 36559.)

### *Tomato products.*

Conditions under which the Secretary of Agriculture will recommend exclusion of shipments of tomato products.

TREASURY DEPARTMENT, *July 11, 1916.*

*To collectors and other officers of the customs:*

Herewith is published for your information and guidance a copy of a letter received from the Secretary of Agriculture relative to the adulteration of tomato products:

This department has been asked to inform importers regarding the tests which it applies in determining whether tomato products are adulterated within the meaning of the Federal food and drugs act, and therefore liable to be refused admission under the provisions of section 2 of the act.

The Bureau of Chemistry of this department has instructed the chiefs of its inspection districts to notify importers that the Department of Agriculture will recommend the exclusion from this country of all shipments of tomato products offered for entry on and after September 1, 1916, if the tomato products, upon examination under the conditions prescribed in Bureau of Chemistry circular 68, are found to contain yeasts and spores, or bacteria, or mold filaments in excess of the following limits: Yeasts and spores per 1/60 cubic millimeter, 125; bacteria per cubic centimeter, 100,000,000; mold filaments in 66 per cent of the microscopic fields; and, further, to give notice that the department is considering the fixing of lower limits for concentrated tomato products which will be published when determined upon.

This department suggests that this information may become more widely known among importers if it be published in the Treasury Decisions and also posted in conspicuous places in customhouses where tomato products are ordinarily offered for entry.

(95500.) WM. P. MALBURN, *Assistant Secretary.*

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(T. D. 36560.)

*Drawback on ribbons, trimmings, and braid.*

Drawback on ribbons, trimmings, and braid manufactured by C. E. Hertlein, of New York, N. Y., with the use of imported yarn, tinsel thread, and lahn.

TREASURY DEPARTMENT, *July 11, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on ribbons, trimmings, and braid manufactured by C. E. Hertlein, of New York, N. Y., with the use of imported artificial silk yarn, tinsel thread, and lahn.

A manufacturing record shall be kept, which will show, in the case of each lot of articles manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity (length, width, and weight), and the kind of article produced; the quantity, value, and identity of each kind of imported material used in the manufacture thereof; the quantity of domestic material used, if any, and the quantity of imported material of each kind appearing in the finished product. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported material appearing in the exported articles, as shown by the abstract from the manufacturing record.

The sworn statement of the manufacturer, dated June 20, 1916, is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on articles exported on and after May 4, 1916.

Respectfully, WM. P. MALBURN,
(30255.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36561.)

*Drawback on shoes.*

Drawback on shoes manufactured by the Gregory & Read Co., of Lynn, Mass., with the use of shoe topping produced for the account of the Seamans & Cobb Co., of Boston, Mass., by the manufacturers designated in T. D. 36449 of June 3, 1916.

TREASURY DEPARTMENT, *July 11, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on shoes manufactured by the Gregory & Read Co., of Lynn, Mass., with the use of

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imported shoe topping manufactured for the account of the Seamans & Cobb Co., of Boston, Mass., with the use of imported fabrics by the manufacturers designated in T. D. 36449 of June 3, 1916.

A manufacturing record shall be kept by the Gregory & Read Co. in the manner described in their sworn statement of June 23, 1916, transmitted herewith, showing, in the case of each lot of shoes manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the number of pairs of shoes produced, the quantity and identity of the shoe topping used in the manufacture thereof, the quantity of shoe topping appearing in the finished shoes, and the quantity and value of the wastage resulting. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The quantity of shoe topping which may be taken as a basis for the allowance of drawback shall not exceed the quantity used in the manufacture of the exported shoes, the allowance for wastage to be reduced according to the quantity of imported fabric which the value thereof will replace.

Drawback may be allowed under these regulations on shoes exported on and after February 17, 1916.

Respectfully, WM. P. MALBURN,
(99243-2.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Boston, Mass.*

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(T. D. 36562.)

*Jacquard figured laces.*

Appeal directed from decision of the Board of United States General Appraisers of June 14, 1916, G. A. 7922 (T. D. 36501), involving the classification of certain Jacquard figured laces.

TREASURY DEPARTMENT, *July 11, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 7th instant, inviting attention to the decision of the Board of United States General Appraisers of June 14, 1916, G. A. 7922 (T. D. 36501), wherein certain Jacquard figured flax laces, used for making lace window curtains, which laces had been assessed with duty at the rate of 60 per cent ad valorem as laces under paragraph 358 of the tariff act of 1913, were held by the board to be dutiable at the rate of 35 per cent ad valorem under the provisions of paragraph 258 of the said act for "Jacquard figured upholstery goods, composed wholly or in chief value of cotton or other vegetable fiber."

You are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the

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provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, WM. P. MALBURN,
(75852.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

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(T. D. 36563.)

*Customs cigar stamps—Sale of.*

TREASURY DEPARTMENT, *July 12, 1916.*

*To collectors and other officers of the customs:*

Attention is invited to T. D. 36043, providing for the deposit of the proceeds of the sale of blanks as a repayment to the appropriation "Printing and binding, Treasury allotment."

This decision is not intended to apply to customs cigar stamps, but only to the blank forms issued by the department for sale. Cigar stamps will be sold as provided for in article 775 of the Customs Regulations of 1915, and the receipts deposited to the credit of the Treasurer of the United States, and accounted for as miscellaneous receipts on account of "Sale of cigar stamps."

(100576.) WM. P. MALBURN, *Assistant Secretary.*

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(T. D. 36564.)

*Polished cylinder glass.*

**Appeal directed from decision of the Board of United States General Appraisers of May 15, 1916, Abstract 39748, involving the classification of certain articles consisting of two plates of polished cylinder glass glued together, etc.**

TREASURY DEPARTMENT, *July 12, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 6th instant, inviting attention to the decision of the Board of United States General Appraisers of May 15, 1916, Abstract 39748, involving the classification of certain articles consisting of two plates of polished cylinder glass glued together and having a black rim or finish around the edges composed of a gluelike material.

The merchandise had been assessed with duty at the rate of 30 per cent ad valorem as a manufacture of glass under paragraph 95 of the tariff act of October 3, 1913, but was held by the board to be dutiable as cylinder glass, polished, at the appropriate rates per square foot, according to size, under paragraph 86 of the said act and by reason of the glass being slightly obscured or of smoky color, subject to the additional duty of 4 per cent ad valorem provided by paragraph 90.

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You are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, WM. P. MALBURN,
(100125.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

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(T. D. 36565.)

*Tant iron—Iron in pigs.*

Appeal directed from decision of the Board of United States General Appraisers of June 2, 1916, G. A. 7916 (T. D. 36452), involving the classification of certain tant iron.

TREASURY DEPARTMENT, *July 12, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 6th instant, inviting attention to the decision of the Board of United States General Appraisers of June 2, 1916, G. A. 7916 (T. D. 36452), wherein certain tant iron, which had been assessed with duty at the rate of 15 per cent ad valorem under the provisions of paragraph 102 of the tariff act of October 3, 1913, for "ferrosilicon, and other alloys used in the manufacture of steel not specially provided for," was held by the board to be free of duty under the provisions of paragraph 518 of the said act for "iron in pigs."

You are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, WM. P. MALBURN,
(100391) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

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(T. D. 36566.)

*Common carrier.*

Discontinuance of the bonded route of the Luckenbach Steamship Co. (Inc.) for the transportation of dutiable merchandise and for the lading and unlading of bonded goods under the act of February 13, 1911.

TREASURY DEPARTMENT, *July 13, 1916.*

SIR: The department has received your letter of the 5th instant, with which was inclosed a request of the Luckenbach Steamship Co. (Inc.) for the discontinuance of the bonded route of said company for the transportation of dutiable merchandise and for the lading and

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unlading of bonded goods under the act of February 13, 1911, which route is covered by the bond of said company, approved September 25, 1914.

The discontinuance is authorized upon the condition that the records of your office show that all requirements of the regulations have been complied with on the part of said company. You should note the fact and date of discontinuance upon the copy of the bond on file in your office, which should be retained without cancellation to meet any liability which may have accrued thereunder.

Respectfully, WM. P. MALBURN,
(91544.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36567.)

*Drawback.*

Article 859 of the Customs Regulations of 1915 amended to provide for the lading of drawback merchandise at night and on Sundays and legal holidays.

TREASURY DEPARTMENT, *July 13, 1916.*

*To collectors and other officers of the customs:*

Article 859 of the Customs Regulations of 1915 is hereby amended by inserting the following paragraph immediately following the last form of inspector's certificate prescribed therein:

"If the merchandise covered by such notice of intent is laden on the exporting vessel or conveyance at night, or on a Sunday or legal holiday, inspection and supervision of lading shall be secured by applying to the collector of customs for the services of an inspecting officer and paying the compensation of such inspector, as provided by the act of Congress approved February 13, 1911, and the regulations made in pursuance thereof, T. D. 31562 of May 8, 1911. Drawback will not be allowed on merchandise laden at night or on Sundays or legal holidays without customs inspection and supervision."

This amendment to the regulations shall be effective as to merchandise exported on or after 30 days from the date hereof.

(85326.) WM. P. MALBURN, *Assistant Secretary.*

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(T. D. 36568.)

*Drawback on hosiery.*

Drawback on hosiery manufactured by the Richmond Hosiery Mills, Rossville, Ga., with the use of imported artificial silk or mercerized yarns.

TREASURY DEPARTMENT, *July 13, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations



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(chapter 18 of the Customs Regulations of 1915) on hosiery manufactured by the Richmond Hosiery Mills, of Rossville, Ga., with the use of imported artificial silk or mercerized yarns and domestic yarns of the same character.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated June 13, 1916, transmitted herewith, which will show, in the case of each lot of hosiery manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity, value, and identity of the imported yarns and the quantity of domestic yarns used, the number of pairs, style, and size of the hosiery produced, the quantities of imported and domestic yarns appearing therein, and the quantity and value of the waste incurred. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported yarn used in the manufacture of the exported hosiery, as shown by the abstract from the manufacturing record, the allowance to be reduced according to the quantity of imported material which the value of the waste will replace.

Drawback may be allowed under these regulations on hosiery exported on or after April 5, 1915.

Respectfully, WM. P. MALBURN,
(95187–4.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36569.)

*Drawback on cigarettes.*

**Drawback on cigarettes manufactured by the Macedonia Tobacco Co., of San Francisco, Cal., with the use of imported Turkish tobacco.**

TREASURY DEPARTMENT, *July 13, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on cigarettes manufactured by the Macedonia Tobacco Co., of San Francisco, Cal., with the use of imported Turkish tobacco.

The allowance shall not exceed the quantity of imported Turkish tobacco appearing in the exported cigarettes, as shown by the sworn statement of the manufacturers, dated June 14, 1916, which is transmitted herewith for filing in your office.

Supplemental sworn schedules covering other brands of cigarettes may be filed, and upon verification of such schedules drawback may be allowed on the cigarettes covered thereby.

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Drawback may be allowed under these regulations on cigarettes exported on and after May 20, 1916.

Respectfully, WM. P. MALBURN,
(105118.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *San Francisco, Cal.*

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(T. D. 36570.)

*Drawback on coin-controlled locks.*

Drawback on coin-controlled locks manufactured with the use of imported sheet brass by the Reliance Die & Stamping Co., of Chicago, Ill.

TREASURY DEPARTMENT, *July 14, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on coin-controlled locks manufactured by the Reliance Die & Stamping Co., of Chicago, Ill., with the use of imported sheet brass.

A manufacturing record shall be kept, which will show, in the case of each set of locks manufactured with benefit of drawback, the quantities and value of the imported material used in the manufacture of the locks, the quantity of imported material appearing in the finished locks, and the net quantity and value of the waste resulting. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance may equal the quantity of imported material used in the manufacture of the exported locks, as shown by the abstract from the manufacturing record, less the quantity of the imported material which the value of the waste will replace.

The sworn statement of the manufacturers, dated June 14, 1916, is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on locks exported on and after May 19, 1916.

Respectfully, WM. P. MALBURN,
(105030.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Chicago, Ill.*

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(T. D. 36571.)

*Drawback on almond paste.*

Drawback on almond paste manufactured by the National Almond Products Co. (Inc.), of New York, N. Y., with the use of imported shelled almonds and refined sugar.

TREASURY DEPARTMENT, *July 15, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations

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(chapter 18 of the Customs Regulations of 1915) on almond paste manufactured by the National Almond Products Co. (Inc.), of New York, N. Y., with the use of imported shelled almonds and refined sugar produced from imported raw sugar.

The quantities of imported almonds and refined sugar which may be taken as a basis to determine the amount of drawback may equal the quantities used in the manufacture of the exported almond paste, as shown by the sworn statement of the manufacturers, dated May 26, 1916, which is transmitted herewith for filing in your office.

Drawback may be allowed on almond paste exported on and after May 18, 1916.

Respectfully, WM. P. MALBURN,
(105007.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36572.)

*Drawback on marble slabs.*

Drawback on marble slabs manufactured by the Borgia Bros. Co., of New York, N. Y., with the use of imported marble blocks.

TREASURY DEPARTMENT, *July 15, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on marble slabs manufactured by the Borgia Bros. Co., of New York, N. Y., from imported marble blocks.

A manufacturing record shall be kept by the company, which will show, in the case of each block of imported marble, the identity and dimensions thereof, the number and dimensions of slabs produced, and the number and width of saw cuts made. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported marble appearing in the exported slabs, with an addition to compensate for the waste incurred in sawing, as shown by the manufacturing record, with the maximum allowance for waste of one-fourth of an inch in width for each saw cut.

The sworn statement of the manufacturers, dated June 13, 1916, is transmitted herewith for filing in your office.

Drawback may be allowed on marble slabs exported on and after May 11, 1916.

Respectfully, WM. P. MALBURN,
(57669.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36573.)

*Immediate transportation ports.*

Northport, Chopaka, and Laurier, in the State of Washington, created immediate transportation ports under the act of 1880.

TREASURY DEPARTMENT, *July 17, 1916.*

*To officers of the customs and others:*

The appended act of Congress, approved July 8, 1916, is published for the information and guidance of all concerned.

(9040–30.) WM. P. MALBURN, *Assistant Secretary.*

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An act for the establishment of Northport, Chopaka, and Laurier, in the State of Washington, as ports of entry for immediate transportation without appraisement of dutiable merchandise.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the privileges of the first section of the act approved June tenth, eighteen hundred and eighty, governing the immediate transportation of dutiable merchandise without appraisement, be, and are hereby, extended to the ports of Northport, Chopaka, and Laurier, in the State of Washington.

Approved, July 8, 1916.

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(T. D. 36574.)

*Drawback on imitation sealskins.*

T. D. 36152 of February 11, 1916, extended to cover imitation sealskins manufactured by the Cimmiotti Unhairing Co., of Brooklyn, N. Y., from imported rabbit furs for the account of Revillon Frères.

TREASURY DEPARTMENT, *July 17, 1916.*

SIR: The department's regulations of February 11, 1916 (T. D. 36152), providing for drawback on "Hudson seal" skins manufactured by the Cimmiotti Unhairing Co., of Brooklyn, N. Y., from imported muskrat skins and plates, are hereby extended to cover imitation sealskins manufactured by the said company from imported rabbit furs (coneys) for the account of Revillon Frères, of New York, N. Y.

The sworn statement of Revillon Frères, dated June 8, 1916, is transmitted herewith for filing in your office. The sworn statement of the Cimmiotti Unhairing Co. is on file in your office in connection with T. D. 35672 of April 23, 1916.

Respectfully, WM. P. MALBURN,
(104896.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36575—G. A. 7936.)

*Envelopes of uncoated paper with the surface decorated.*

Envelopes composed of paper made with so-called "laid" lines running parallel and very close to each other and crossed at right angles and at regular intervals of space by similar lines, are properly dutiable under the *eo nomine* provision in paragraph 324, act of 1913, for "envelopes and all other articles composed wholly or in

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chief value of any of the foregoing papers," rather than dutiable under the provision in paragraph 327 of said act for "paper envelopes, folded or flat, not specially provided for."

United States General Appraisers, New York, July 10, 1916.

In the matter of protests 794655, etc., of Japan Paper Co. against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Importers not represented by counsel.

*Bert Hanson*, Assistant Attorney General (*Martin T. Baldwin*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; COOPER, G. A., not participating).

FISCHER, *General Appraiser:* The merchandise in question consists of envelopes which have been returned by the appraiser as having been composed of handmade paper with a surface design in the form of laid lines, also of paper boxes, the usual coverings or containers of said envelopes. Duty was levied upon said articles at the rate of 35 per cent ad valorem under the following provision in paragraph 324 of the act of 1913:

Uncoated papers, * * * with the surface or surfaces wholly or partly decorated or covered with a design, fancy effect, pattern, or character, *whether produced in the pulp or otherwise* except by lithographic process, * * * *envelopes*, and all other articles composed wholly or in chief value of any of the foregoing papers not specially provided for in this section.

It is alleged in the protests that the envelopes are properly dutiable at the rate of 15 per cent ad valorem under the provision in paragraph 327 of said act for "paper envelopes, folded or flat, not specially provided for," and that the boxes are dutiable at the rate of 25 per cent ad valorem under the provision in paragraph 332 of said act for "manufactures of paper or of which paper is the component material of chief value, not specially provided for."

However, the only claim urged at the hearing is that alleged under paragraph 327, and all of the proof introduced on behalf of the importer is directed toward endeavoring to establish as a fact that said envelopes are composed of plain paper—that is, paper without any surface design, fancy effect, pattern, or character.

Inasmuch, therefore, as it is mutually conceded that the merchandise consists of paper envelopes, the sole question presented for our determination is, What kind of paper are the envelopes made of? If it is surface decorated or covered with a design, fancy effect, pattern, or character, then unquestionably the *eo nomine* provision in paragraph 324 for envelopes of that character applies, irrespective of the method employed in producing such surface effect. If it is a plain paper, then the claim alleged under paragraph 327 is a meritorious one and should be sustained. However, let the proof and the samples of the merchandise in evidence decide.

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Thomas N. Fairbanks, vice president of the importing company, testified that the paper in question is a laid paper, made by hand on a frame in which there is a weave with laid lines; that the lines which are visible on the paper are produced by permitting the lines of the weave to show in the sheet; that laid paper may be made by hand or by machine and with or without the laid lines visible thereon; that it is made with the lines visible because some people so prefer it, but that there are others who prefer it without any visible lines.

Moreover, an inspection of the samples in evidence shows that the paper of which the envelopes are composed has plainly displayed thereon a number of parallel lines, very close together, and crossed at right angles and at regular intervals by similar lines. These lines are all plainly visible to the eye, especially when the paper is held up to the light.

Now, it will be observed that the language of the particular provision in paragraph 324, under which these articles have been classified, specifically provides for all "uncoated papers * * * with the surface or surfaces wholly or partly decorated *or covered* with a design, fancy effect, pattern, or character, whether produced in the pulp or otherwise, * * * envelopes, and all other articles composed wholly or in chief value of any of the foregoing papers."

Here, then, we have envelopes made of a special kind of paper which is "covered" with lines which by reason of their regularity and uniformity may accurately be described as constituting a "design" or at least a "character," in that they serve to characterize and differentiate this particular paper from the ordinary plain papers of commerce. There is no question in our minds but that the scope of the provision in paragraph 324 is comprehensive enough to embrace all such papers, irrespective of the method by which they are produced. Furthermore, the proof is conclusive that this particular paper is so made only because some people so prefer it, while others desire the same kind of paper made perfectly plain—that is, without any visible lines thereon. It is therefore fair to assume that it is solely because of its appearance and attractiveness that this particular kind of paper is specially desired by some people.

Our ruling in the matter of protests 389282, etc., of John Dunn, jr., & Co., and others, affirmed by the United States Court of Customs Appeals in the case of Dunn *v.* United States (2 Ct. Cust. Appls., 65; T. D. 31627), is decisive of the issue here raised. That case involved the interpretation of a provision in paragraph 411 of the act of 1909 which in effect and substance is the same as the pertinent provision in the present paragraph 324 now under consideration. Commenting upon the broad and comprehensive scope of the language employed by Congress to give expression to its plainly manifest

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purpose to specially provide for the particular class of uncoated papers with the surface decorated, Judge Barber, speaking for the court in that case, said:

> Indeed, it is not easy to conceive how Congress could have used more apt language to include every stage of its manufacture, beginning with the pulp itself, than the words "whether produced in the pulp or otherwise." * * * Congress intended that every decorated effect, however produced, except by lithography, should render the paper presenting such effects upon its surface dutiable at the prescribed rates.

Again, answering the further contention of the importers there and here made that a decorated effect necessarily presupposes some additional process employed in the manufacture of such papers, the court, in its opinion just referred to, said:

> It would seem to be an unwarranted refinement of construction, in view of the explicit language of paragraph 411 under consideration, to say that the decorated effects therein referred to are only such as are produced by independent processes upon the surface of the paper, thereby excluding the same if and when produced before the finishing processes were applied. Such a construction would render the words "produced in the pulp" nugatory and also involve the apparently untenable position that paper has no surface until it is finished.

Inasmuch, therefore, as it can not successfully be contended that the paper of which these envelopes are composed is a plain paper, for the simple reason that an inspection of the samples in evidence discloses the very obvious fact that both surfaces thereof are covered with laid lines which are deliberately produced in the manufacture of the paper, for the conceded reason that some people prefer the paper that way, we have no hesitancy in holding that the effect so produced renders the paper a decorated paper within the meaning of the provisions of paragraph 324.

We accordingly affirm the decision of the collector in so classifying the merchandise. The protests are therefore severally and in all respects overruled.

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(T. D. 36576—G. A. 7937.)

*Copper "schrot"—Clippings from new copper.*

So-called copper "schrot," consisting of copper in the form of small flakes produced by various manufacturing processes and intended to be converted into bronze powder, is properly dutiable under paragraph 167, act of 1913, as an article wholly or partly manufactured from copper, rather than entitled to free entry under the provision in paragraph 461 of said act for "clippings from new copper."

United States General Appraisers, New York, July 10, 1916.

In the matter of protests 771103, etc., of Geo. Benda against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

*Brooks & Brooks* (*Frederick W. Brooks, jr.*, of counsel) for the importer.

*Bert Hanson*, Assistant Attorney General (*Martin T. Baldwin*, special attorney), for the United States.

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Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; COOPER, G. A., not participating).

FISCHER, *General Appraiser:* The merchandise, invoiced as "kupferschrot," consists of copper in the form of flakes, and is destined for use in the manufacture of bronze powder Duty was levied thereon at the rate of 20 per cent ad valorem under paragraph 167 of the act of 1913 as manufactures of metal not specially provided for, and it is claimed to be properly entitled to free entry under the following paragraph of said act:

461. Copper ore; regulus of, and black or coarse copper, and copper cement; old copper, fit only for remanufacture, copper scale, clippings from new copper, and copper in plates, bars, ingots, or pigs, not manufactured or specially provided for in this section.

At the hearing counsel for the importer, in his preliminary statement, limited his claim to the specific provision in said paragraph for "clippings from new copper."

The manufacturing processes employed in producing the merchandise here in question, as described by the witness Johan Besenrauther, are as follows: New copper in the form of ingot blocks is first melted and then poured into ribbon-shaped forms about 3 inches wide and about one-fourth to one-half inch thick, after which it is cut into pieces about 3 inches long, and subsequently placed in a stamping machine and there broken up and reduced to the form of flakes, which is the condi ion in which the merchandise is imported. In order to produce bronze powder, which is the ultimate purpose for which the goods in question are imported, it is necessary that these copper flakes shall be subjected to further treatment by being put into stamping machines which contain a base and hammers, and there beaten and stamped into a fine powder.

This description of the different manufacturing processes which are necessarily employed in order to produce the imported merchandise leaves no question in our minds but that it is an article which may truly be said to have been either wholly or partly manufactured. It certainly has entirely lost its identity as mere copper, and has become a new and different article with a distinctive name, to wit, "schrot."

While, therefore, it may be true that a certain stage in the production of these flakes, or schrot, the copper of which they are composed may be said to have been cut or clipped into pieces about 3 by 3 inches, nevertheless the proof equally establishes that the final manufacturing method employed to convert such pieces into the present article as imported involved a stamping and not a clipping process.

Furthermore, the record also shows that, as a result of the various manufacturing methods applied thereto, all of the copper present

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in the original ingot was transformed and converted into different shapes and conditions preparatory to making the flakes or schrot here under consideration. Consequently, it can hardly be maintained that the present article consists merely of clippings from new copper. The words "clippings from new copper" would suggest to the mind that at least some part of the copper should have been left intact and unclipped. However, as the article appears herein it represents a completely new manufacture with nothing about it which would tend to furnish the slightest clue as to what was the form and condition of the copper from which it was made.

The Standard Dictionary defines the word "clip" as "(1) to cut with shears or scissors; shear straight or even; trim with scissors: (2) to snip apart from; * * * curtail." And the word "clippings" is defined by the same authority as "that which is cut off or out by clipping."

Moreover, it will be noted that the provision in paragraph 461 is for "clippings from new copper," and not for copper which has been clipped into pieces about 3 inches long and subsequently reduced to small flakes by stamping processes in its advancement toward being converted into bronze powder. What Congress evidently had in mind in enacting the provision for "clippings from new copper" are the small clippings which fall from new copper during the course of its being manufactured into articles. This view is confirmed by a reading of the other provisions of paragraph 461, practically all of which refer to and cover merchandise composed of copper which has not been sufficiently advanced in condition by reason of the manufacturing processes applied thereto to warrant it in being treated as manufactured articles. The paragraph provides free entry for copper ore, copper regulus, black or coarse copper, old copper fit only for remanufacture, copper scale, clippings from new copper and copper in plates, bars, ingots, or pigs, not manufactured or specially provided for. It is too clearly manifest that the congressional purpose was to admit free of duty copper which may virtually be said to be in the form of raw material—that is, copper which as imported shows that it still has to receive the first stages of manufacturing before it is even susceptible of being converted into manufactured articles.

Inasmuch, therefore, as we are fully satisfied that the so-called copper "schrot" is an article which has been so far advanced in condition through manufacturing processes that all that remains to be done in order to convert it into its ultimate use as bronze powder is to further hammer or stamp it into a fine powder, we hold it to be properly excluded from the provisions of said paragraph 461 and to be dutiable at the rate of 20 per cent ad valorem as an article wholly or partly manufactured from copper.

The protests are therefore severally and in all respects overruled.

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## (T. D. 36577—G. A. 7938.)

*Castings— Finished machine parts.*

Parts of brewing-mash filtering machines composed of castings of iron which have been molded, drilled, and machined or otherwise advanced in condition to the point where they have become finished machine parts are properly dutiable under paragraph 167, act of 1913, as manufactures of metal not specially provided for rather than dutiable under paragraph 125 as advanced castings of iron. The present provision for castings in paragraph 125 by its terms expressly excludes such castings as are finished machine parts.

United States General Appraisers, New York, July 10, 1916.

In the matter of protest 794916 of Simon, Buhler & Baumann (Inc.) against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

*Hatch & Clute* (*W. F. Welch* of counsel) for the importers.

*Bert Hanson*, Assistant Attorney General (*Martin T. Baldwin* and *Harry M. Farrell*, special attorneys), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; COOPER G. A., not participating).

FISCHER, *General Appraiser:* The appraiser's report, which is in evidence herein, reads as follows:

The merchandise consists of mash-filtering machines, complete with the exception of brass, bronze, and rubber fittings and filtering cloths, and are composed of iron castings, molded, drilled, and machined. They were returned for duty as a manufacture of metal n. s. p. f. at 20 per cent ad valorem under paragraph 167, act of 1913. It is of the same character as the brewing-machine parts subject of T. D. 34552, according to which they are dutiable at 10 per cent ad valorem under paragraph 125, act of 1913.

The protest alleges that said merchandise is properly dutiable at the rate of 10 per cent ad valorem under the following provision in paragraph 104 of said act:

104. Beams, girders, joists, angles, channels, car-truck channels, TT, columns and posts or parts or sections of columns and posts, deck and bulb beams, sashes, frames, and building forms, together with all other structural shapes of iron or steel, whether plain, punched, or fitted for use, or whether assembled or manufactured, * * *.

Or at the same rate of duty under the following provision in paragraph 125 of said act:

125. Cast-iron pipe of every description, cast-iron andirons, plates, stove plates, sadirons, tailor's irons, hatter's irons, and castings and vessels wholly of cast iron, including all castings of iron or cast-iron plates which have been chiseled, drilled, machined, or otherwise advanced in condition by processes or operations subsequent to the casting process but not made up into articles of finished machine parts; * * *.

A careful reading of the two paragraphs thus invoked by the importers makes it plainly apparent that whatever applicability the provisions of paragraph 125 may be said to possess with reference to the particular class of merchandise here under consideration, there

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exists no relation whatever between the terms of paragraph 104 and the present importation. Indeed, in order to fall within the scope of the latter paragraph it is essential that the articles should be shown to consist of structural shapes composed of iron or steel—that is, it must be established that they are shapes of iron or steel which are designed to enter into and become parts of a structure. Certainly, the brewing-mash filter or machine of which the articles in question are finished parts can not be said to be a structure, and it therefore necessarily follows that such parts are not structural shapes within the meaning of said paragraph 104. Moreover, we are satisfied that, if for no other reason, the application of the rule of *ejusdem generis* would require that merchandise of the kind involved herein should be excluded from said paragraph. Note G. A. 5395 (T. D. 24602).

Again, it will be observed that the decision referred to in the report of the appraiser, and upon which that officer apparently based his conclusion that the articles in question would now be properly classifiable as castings under paragraph 125, was rendered in a case arising under the tariff act of 1909. In that case—Lang *v.* United States (5 Ct. Cust. Appls., 362; T. D. 34552)—the Court of Customs Appeals had before it for judicial interpretation the language of paragraph 147 of said act, the immediate predecessor of the present paragraph 125.

The wording of the old and the new paragraphs—at least in so far as the provisions in any way pertinent hereto are concerned—is substantially if not literally the same, save for the additional exception from the operation of the present provision which Congress evidently saw fit to make when it added thereto the words "or finished machine parts." This language is new, and is not found in the corresponding provision in paragraph 147 of the last preceding act.

In so doing, the conclusion is inevitable that Congress, having in mind the decision of the United States Court of Customs Appeals in the case of United States *v.* Leigh & Butler (4 Ct. Cust. Appls., 304; T. D. 33517), cited in the case of Lang *v.* United States, *supra*, intended to meet and overcome the effect thereof, in so far as iron or steel castings of the kind therein passed upon by the court were concerned, by adding to the new provision language which deliberately and specifically excluded from the scope of such provision not only such castings as were made up into articles but also such castings as were shown to consist of finished machine parts. Hence, it follows that not only is the case cited by the appraiser as an authority herein wholly inapplicable to the present merchandise, but as a result of the change in the new provision the merchandise which the court held to be properly within the purview of paragraph 147 of the act of 1909

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would now be excluded from the present castings provision by virtue of the very terms thereof.

But the importers insist that the articles in question, being parts of a brewing-mash filter, are more accurately described as parts of an apparatus than as parts of a machine, and that consequently the words of exclusion added to the provision of paragraph 125 can have no possible application to the present shipment.

This contention must be ignored in view of the fact that it is clearly established, and in fact conceded of record, that the articles under consideration are precisely similar in character to those which formed the subject of the court's decision in the Lang case, *supra*. In the course of its opinion in that case, the court said:

> The testimony adduced on the part of the importer, which is uncontradicted, shows that the castings were designed for use for mash filters. They are the finished castings, molded, drilled, and machined. But in order to make the machine complete, they require rubber gaskets, which are imported separately from Munich. * * *
>
> Is the present importation such a complete article? We think not. It is not yet adapted to its final use, lacking as it does substantial parts, without which it can not be devoted to the ultimate contemplated use.

It will therefore be seen that the court considered and treated articles admittedly the same as those here under consideration as finished machine parts. Furthermore, the witness who appeared herein on behalf of the importers, on being asked this question, "Without them it was of no value?" replied, "The machine couldn't be used." For us to find as matter of fact that the article for which the parts here under consideration are intended is an apparatus and not a machine would certainly be drawing a very fine line of demarcation, especially since the common and ordinary meaning of the word "apparatus," as set forth in the dictionaries, is unquestionably broad enough in scope to include a machine. Webster defines the term as "any complex instrument or appliance, mechanical or chemical, for a specific action or operation; machinery, mechanism." And the definition thereof given in the Standard Dictionary is "any complex device or machine designed or prepared for the accomplishment of a special purpose."

We therefore find as a fact that the articles in question are castings of iron which have been advanced to the point where they have become finished machine parts. This finding necessarily requires that they be excluded from the provisions of paragraph 125; and inasmuch as they are not elsewhere specifically provided for, we hold that said articles are properly relegated for tariff classification to the general provision in paragraph 167 for manufactures of metal not specially provided for, and as such dutiable thereunder at the rate of 20 per cent ad valorem, as classified by the collector.

The protest is therefore overruled in all respects and the decision of the collector affirmed.

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*Abstracts of decisions of the Board of General Appraisers.*

*Board 1*—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

BEFORE BOARD 1, JULY 10, 1916.

**No. 39987.**—Protests 772580, etc., of Geo. S. Bush & Co. (Portland, Oreg.).

TAR OIL—COAL-TAR PREPARATION.—Merchandise classified as a coal-tar preparation at 15 per cent ad valorem under paragraph 21, tariff act of 1913, is claimed entitled to free entry as tar oil under paragraph 452.

Opinion by MCCLELLAND, G. A. Protests unsupported; overruled.

BEFORE BOARD 2, JULY 10, 1916.

**No. 39988.**—Protest 769287 of Bullock's (Los Angeles).

WEARING APPAREL, BRAIDED.—Smoking jackets of wool with the sleeves and front edges trimmed or ornamented with silk braid, classified as wool wearing apparel, appliquéd, at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as wool wearing apparel at 35 per cent under paragraph 291.

Opinion by HOWELL, G. A. The jackets in question were found not to be appliquéd. United States *v.* Hamburger (5 Ct. Cust. Appls., 217; T. D. 34382), affirming G. A. 7525 (T. D. 34087), and Loewenthal *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464), followed. On the authority of G. A. 7613 (T. D. 34823), affirmed in United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388), the articles in question were held dutiable as wool wearing apparel under paragraph 291, as claimed.

BEFORE BOARD 3, JULY 12, 1916.

**No. 39989.**—Protest 786722 of Geo. Borgfeldt & Co. (New York).

COTTON TOWELS—TENNIS BALLS.—Cotton towels classified as cotton pile fabrics at 40 per cent ad valorem under paragraph 257, tariff act of 1913, are claimed dutiable at 25 per cent under paragraph 264. Tennis balls classified as toys at 35 per cent under paragraph 342 are claimed dutiable as manufactures of rubber at 10 per cent under paragraph 368.

Opinion by WAITE, G. A. Upon stipulation of counsel the towels were held dutiable under paragraph 264. G. A. 7656 (T. D. 35019) followed. The tennis balls were held dutiable under paragraph 368. Abstract 39000 followed.

**No. 39990.**—Protest 800059 of B. Altman & Co. (New York).

BAMBOO LAMP SHADES.—Lamp shades of bamboo, colored, classified under paragraph 175, tariff act of 1913, are claimed dutiable at 15 per cent under paragraph 176.

Opinion by WAITE, G. A. On the authority of G. A. 7804 (T. D. 35848) the bamboo lamp shades in question were held dutiable under paragraph 176.

**No. 39991.**—Protest 800378 of Amerman & Patterson (New York).

MUSTARD BRAN—WASTE.—This protest is against the classification of white mustard bran, consisting of mustard dross or mustard-seed hulls, as waste under paragraph 384, tariff act of 1913.

Opinion by WAITE, G. A. The mustard bran in question was held properly classified as waste under paragraph 384. Abstract 39877 followed.

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**No. 39992.**—Protest 767750 of Henry Buss & Co. (New York).

AGATE COLLAR BUTTONS.

HAY, *General Appraiser:* The merchandise in this case consists of one-piece collar buttons, which the appraiser reports "composed of agate," and combination collar and cuff buttons composed of a metal shank with a hinged top of metal, the back or the base of the button being faced with celluloid or bone. The collector assessed duty upon the so-called agate buttons at 40 per cent under paragraph 339 as collar buttons composed wholly of agate, and upon the combination collar and cuff buttons at 40 per cent under paragraph 339, as buttons not specially provided for. Against this classification the protest was filed, claiming that the buttons composed of the material known as agate are dutiable as agate buttons at 15 per cent under paragraph 339, and that those composed of metal and celluloid or metal and bone are dutiable as metal buttons under the provisions of paragraph 151, act of October 3, 1913.

The record in Charles H. Brandt's case, G. A. 7753 (T. D. 35590), was offered and received in evidence in this case, and the testimony in the case at bar we think discloses that the merchandise is identical with that which was the subject of the decision of this board in that case. We can do no better than to repeat that decision literally.

* * * * * * *

In addition to the record in the case above quoted, some testimony was offered on behalf of the Government tending to show that collar and cuff buttons composed of real agate had never been imported into the United States. We think the testimony fails to establish that fact. Two examiners from the appraiser's office in New York testified that they had not known of the importation of collar or cuff buttons composed of real agate, and two other witnesses were called who have had large experience in that business who gave the same testimony; but even were it clearly established that collar and cuff buttons composed of real agate had never been imported into the United States, we can not see that it would in any way influence the construction which we have in the above quoted decision placed upon that paragraph. That decision we conceive to be based upon the well-established rules of construction, and it does not follow that because there have been no agate collar buttons imported into the United States Congress may not legislate relative thereto. It is not infrequent in the making of tariff laws that articles not ordinarily imported into the United States are made dutiable because of the effect that the importation of such articles might have upon other articles of universal importation. The conclusion that we reached in Brandt's case, supra, is, we think, the conclusion that must of necessity be reached in this case.

As to the combination collar and cuff buttons of metal and celluloid, or metal and bone, the case must be controlled by the decision of the Court of Customs Appeals in Henry Buss & Co. *v.* United States (6 Ct. Cust. Appls., 192; T. D. 35441). The protest is sustained and the collector directed to reliquidate the entries accordingly.

**No. 39993.**—Protest 765923-5001 of American Express Co. (New Orleans).

LEGALITY OF LIQUIDATION.—An item of "unforeseen expenses" deducted by the importer upon entry was added to make market value. It is claimed that this item is no part of the dutiable value.

Opinion by HAY, G. A. It was found that the record fails to sustain the importer's contention that the collector's action was not in accordance with the law. Protest verruled.

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BEFORE BOARD 3, JULY 14, 1916.

**No. 39994.**—Protests 787798, etc., of Hirsh & Schofield et al. (New York).

MALT EXTRACT.—It is claimed in these protests that malt extract is dutiable at 23 cents per gallon under paragraph 246, tariff act of 1913.

Opinion by WAITE, G. A. On the authority of United States *v.* Britt (7 Ct. Cust. Appls., —; T. D. 36389) the malt extract in question was held dutiable at 23 cents per gallon under paragraph 246 on the quantities shown by the reports of the gauger.

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**No. 39995.**—Protests 727329, etc., of Kam Tai & Co. et al. (Honolulu and San Francisco).

SALTED EGGS.—Merchandise invoiced as salt eggs or salted eggs, classified as "eggs frozen or otherwise prepared" under paragraph 203, tariff act of 1913, is claimed free of duty as eggs of poultry under paragraph 478.

Opinion by WAITE, G. A. On the authority of Abstract 37344 the salted eggs were held entitled to free entry under paragraph 478.

**No. 39996.**—Protests 791976-57732, etc., of Chas. D. Stone & Co. et al. (Chicago and New York).

LEGALITY OF REAPPRAISEMENT OF COCOA.

HAY, *General Appraiser:* These are protests against the liquidation of entries by the collector upon the basis of the rereappraised value, the importers claiming that the appraisement, the reappraisement, and the rereappraisement of the merchandise were made upon a wrong principle of law, in that the appraiser and the general appraisers appraised the cost of the cartons. The cocoa in question was invoiced at a certain value for the total quantity of each quality, the invoice specifying the number and size of the packages that go to make up each total. The cost of packing and the value of the tins are separately invoiced and added to the total value of the cocoa. The appraiser in finding the value of the cocoa placed a different value upon the cocoa packed in different size tins. This value was affirmed upon reappraisement and rereappraisement, but the protestant contends that the per se value of the cocoa remains the same regardless of the size of the packages, and that the appraisement should have proceeded as of merchandise in bulk. The protests were submitted upon the record as forwarded to the board by the collector, and a stipulation of fact entered into by and between the importers and the Assistant Attorney General. The record as forwarded by the collector contains, in addition to the protest, invoice, and entry papers, the decision of the general appraiser and the Board of General Appraisers in the reappraisement case herein attacked. It is apparent from an examination of the decisions and the return of the general appraiser and the Board of General Appriasers that, in ascertaining the foreign market value of the cocoa, consideration was given to the size of the tins in which it was contained. Nothing in the record, however, shows that the foreign market value was not regulated or controlled by the size of the tins in which the merchandise was packed. It is not for us to reappraise the merchandise, hence we can not hold that the general appraiser or Board of General Appraisers erred in determining that the foreign market value of the cocoa was regulated by the size of the tins, as there is nothing in the stipulation, or anywhere else, to be found in the record to show that the size of the tin does not regulate and control the foreign market value of the cocoa. The record, in our judgment, fails to disclose any such error on the part of the reappraising officers as would warrant an interference with the collector's action in liquidating the entries. The protests are therefore overruled.

**No. 39997.**—Protest 797049 of Kimberly-Clark Co. (Detroit).

CLERICAL ERROR—SEIZURE.

HAY, *General Appraiser:* This is a protest against the assessment of additional duty by the collector by reason of an apparent undervaluation. The protestant claims that a manifest clerical error was made upon the entry of which he should be relieved. It is stated in the protest that an error was made in entering 160 metal-tipped paper cores at $43 on September 14, 1915, and this, the protest points out, was an error, by reason of the fact that on September 15, 1915, 80 similar cores were entered at $45. The protestant also claims that these two entries were before the collector at the same time and hence the error in entering the 160 cores was manifest to him. The entry of September 15, 1915, is not a part of the record in this case, as it was not offered in evidence, is not before us, and can not be considered by us, as our only knowledge of it is from the statement contained in the protest.

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Counsel for the protestant in his brief contends, with a degree of plausibility, that the change in the provisions for the assessment of additional duty imposes upon the collector the duty of seizing the merchandise in cases where the advance is 75 per cent or more unless there is a clerical error, and in cases where there is a clerical error the additional duty should not be assessed; and further, that the failure of the collector to seize the merchandise in the case under consideration is evidence that there was a clerical error manifest to the collector, he having both invoices before him at the same time. Under the settled rule of law as it existed prior to the decision of the Court of Customs Appeals in United States *v.* Swedish Produce Co. (4 Ct. Cust. Appls., 223; T. D. 33427), testimony could have been offered in this case and the contention of the protestant might have been found to be a valid one. However, under the rule now existing by virtue of the various decisions of the Court of Customs Appeals, the error is one from which this board has no power to give relief. The protest is therefore overruled.

**No. 39998.**—Protest 798243–58602 of Sears, Roebuck & Co. (Chicago).

COMMISSIONS—DURESS.—It is claimed here that an item of commission should not have been added by the appraiser to make market value.

Opinion by HAY, G. A. From the record no reason was found for disturbing the collector's action.

**No. 39999.**—Protest 791022 of F. W. Woolworth Co. (New York).

SNAPPERS—FIREWORKS.—Snappers consisting of a tissue-paper cap, cardboard roll, and metal-coated, crêpe, or other fancy paper, so wrapped that it makes a roll of 8 inches long, divided into three sections, the cap and cardboard being in the middle section with only the ends of the snapper extending, classified as fireworks under paragraph 344, tariff act of 1913, are claimed dutiable as toys under paragraph 342, or as manufactures of paper.

Opinion by HAY, G. A. Protest overruled.

**No. 40000.**—Protest 789801 of J. R. Simon & Co. (New York).

PHILIPPINE MERCHANDISE.—Lawn embroidered waist fronts are claimed free of duty under paragraph C of section 4, tariff act of 1913.

Opinion by HAY, G. A. Paragraph C provides free entry for merchandise shipped out of the United States, manufactured in the Philippine Islands, and returned to the United States under certain conditions. It was not shown by this record that the merchandise in question was shipped out of the United States. Protest overruled.

**No. 40001.**—Protest 781539 of Louis Stern & Co. (Providence).

AMBER CIGAR AND CIGARETTE HOLDERS—SMOKERS' ARTICLES.—Amber cigar and cigarette holders classified as smokers' articles under paragraph 381, tariff act of 1913, are claimed dutiable as manufactures of amber under paragraph 367.

Opinion by HAY, G. A. The article in question was found to be complete and capable of being used as a cigar or cigarette holder, but having a slight depression, evidently made for a gold band. It was not found that this band is necessary to its use, apparently serving no other purpose than ornamentation It was held to be, as imported, a completed smokers' article, properly classified under paragraph 381. Abstract 14844 (T. D. 28036) cited

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## (T. D. 36578.)

### *Drawback on cough drops.*

Drawback allowed on cough drops manufactured by Smith Bros., of Poughkeepsie, N. Y., with the use of imported raw sugar.

TREASURY DEPARTMENT, *July 18, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff of October 3, 1913, and the drawback regulations (chapter



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18 of the Customs Regulations of 1915) on cough drops manufactured by Smith Bros., of Poughkeepsie, N. Y., with the use of imported raw sugar.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated June 13, 1916, transmitted herewith, which will show, in the case of each lot of cough drops manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity and identity of refined sugar and the quantity of all other materials used, as well as the quantity of cough drops produced. A sworn abstract from the manufacturing record shall be filed with the drawback entry.

The quantity of refined sugar which may be taken as a basis for computing the drawback may equal the quantity used in the manufacture of the exported cough drops, as shown by the abstract from the manufacturing record, with the maximum of the quantity shown in the sworn statement of the manufacturers above referred to.

Drawback may be allowed on cough drops exported on and after January 18, 1916.

Respectfully, WM. P. MALBURN,
(104568.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36579.)

*Cork waste.*

Cork waste, consisting of cork disks known as "throw outs," mixed with cork cuttings, broken disks, etc., free of duty under paragraph 464, tariff act of 1913.

TREASURY DEPARTMENT, *July 19, 1916.*

SIR: I have to refer to T. D. 36214 and T. D. 36303 relative to the classification of so-called cork waste, consisting of cork disks more or less imperfect and known as "throw outs," mixed with cork cuttings, broken disks, etc.

In T. D. 36214 you were directed to assess duty on the proportion of the merchandise represented by the whole disks as manufactured cork disks under paragraph 340 of the tariff act of 1913, while in T. D. 36303 the said instructions were suspended pending further investigation.

From an investigation made by the department it appears that merchandise of the character in question is commercially known and dealt in as cork waste and was so known and dealt in at the time of the passage of the present tariff act.

You will therefore continue to pass such merchandise free of duty as cork waste under paragraph 464 of the tariff act of 1913.

Respectfully, WM. P. MALBURN,
(44102.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Baltimore, Md.*

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(T. D. 36580.)

*Drawback on metals.*

**Drawback on linotype metal, stereotype metal, Babbitt or antifriction metal, pig lead, antimonial lead, and solders manufactured by the Great Western Smelting & Refining Co., of Chicago, Ill., with the use of imported lead drosses, antimonial lead drosses, scrap lead, old zinc, etc.**

TREASURY DEPARTMENT, *July 24, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on linotype metal, stereotype metal, Babbitt or antifriction metal, pig lead, antimonial lead, solders, and similar reclaimed metals and metal alloy produced by the Great Western Smelting & Refining Co., of Chicago, Ill., with the use of imported lead drosses, antimonial lead drosses, scrap lead, old zinc, scrap aluminum, antimony, scrap Babbitt, type metals, type drosses, solder drosses, or similar imported materials.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated June 6, 1915, transmitted herewith which will show, in the case of each lot of metal manufactured for exportation with benefit of drawback, the quantity, identity, and assay of each kind of imported dutiable material and the quantity and assay of each other material used, and the kind and net weight of the metal produced. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantities of imported materials appearing in the exported products, as shown by the abstract from the manufacturing record.

Drawback may be allowed under the regulations on the materials covered thereby exported on and after April 24, 1916.

Respectfully, WM. P. MALBURN,
(15478) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Chicago, Ill.*

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(T. D. 36581.)

*Foreign-built cars.*

**Foreign-built cars brought into the United States in the regular course of business may be used for carrying either local or through shipments on their return trip to the foreign country.—T. D. 36513 followed.**

TREASURY DEPARTMENT, *July 22, 1916.*

SIR: The department refers to your letter of the 27th ultimo, inviting attention to the decision of the Court of Customs Appeals in T. D. 36513, wherein it is held that foreign-built cars brought into the United States and used in domestic commerce are dutiable.

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In reply to your request for instructions as to whether such cars may be permitted to carry domestic merchandise, I have to advise you that, following the long continued practice as set forth in the various rulings of the department cited by the Court of Customs Appeals in T. D. 36513, cars of foreign build brought into the United States from contiguous foreign territories in the regular course of their employment in international traffic may be permitted to proceed to their destination in the United States and to return loaded to the foreign country without being liable to the payment of duty. Such cars may be used for carrying either local or through shipments in the ordinary course of business on their return trip to the foreign country, but should not be permitted to be used in purely domestic traffic not incident to the return trip to the foreign country.

Respectfully, WM. P. MALBURN,
(61700) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Detroit, Mich.*

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(T. D. 36582—G. A. 7939.)

*Slippers—Component material.*

**An article whose component materials are leather, wool, and cattle hair, leather being the most valuable of the three materials, where the cattle hair and wool together would be of greater value than the leather, would not be classified as wool chief value by treating the cattle hair as wool by construction and adding it to the wool component, but the three single components must be separated and the article classified as in chief value of leather.**

United States General Appraisers, New York, July 19, 1916.

**In the matter of protest 783594 of American Shipping Co. against the assessment of duty by the collector of customs at the port of New York**

[Reversed.]

*Strauss & Hedges* (*Jacob L. Klingaman* of counsel) for the importer.

*Bert Hanson*, Assistant Attorney General (*Charles D. Lawrence*, special attorney), for the United States.

**Before Board 1 (McCLELLAND, SULLIVAN, and BROWN, General Appraisers; SULLIVAN, G. A., not participating).**

BROWN, *General Appraiser:* This suit is brought to determine whether certain shoes or slippers composed of wool, leather, and other materials are properly dutiable, as classified by the collector, under paragraph 291 as—

**Clothing, ready-made, and articles of wearing apparel of every description, * * * composed wholly or in chief value of wool, 35 per centum ad valorem.**

or free of duty under the provision in paragraph 530 of the free list covering—

**Boots and shoes made wholly or in chief value of leather**

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The collector, on advice of the appraiser, accepted the itemized figures of value given on the invoice, which on item 16030 5/6 (which is taken for purposes of illustration) give the following percentages:

| | Per cent. |
|---|---|
| Value of leather sole and leather binding, including wages for clicking and stitching | 34 |
| Value of upper woolen, including wages for clicking and stitching | 28 |
| Value of cotton lining | 11 |
| Value of felt cow hair between-sole | 11 |
| Wages and sundries | 16 |

This on the face of it would make leather chief value and bring the goods under paragraph 530. But the appraiser added the 28 per cent (woolen upper) to the 11 per cent (felt cow hair between-sole), the two combined making 39 per cent, and on that theory it was returned and classified as wool chief value. We presume this was done on the supposition or claim that a manufacture of cattle hair would be taxable, by similitude, under the provision for manufactures of wool.

It is true that certain particular manufactured forms of cattle hair have been held taxable under the wool schedule by reason of some striking similarity of the use of the particular article to the same article when made of wool, as in the case of Pittsburgh Plate Glass Co. *v.* United States (2 Ct. Cust. Appls., 389; T. D. 32162), where an article made of cattle hair, used for polishing glass and as a substitute for a wool polisher, was so classified. But this came about solely on account of the similarity *of use.* Cattle hair is radically different from wool in *material,* quality, and texture.

The rule for determining the material of chief value is fixed by paragraph 386 and provides that it "shall be held to mean that component material which shall exceed in value any other *single* component *material* of the article."

It is plain, therefore, that the cattle-hair portion of the insole can not be treated as wool, by construction, and added to the value of the wool of the upper to make wool chief value, as was done by the collector.

With each single component separated, namely, leather, wool, cattle hair, etc., leather is the most valuable single component, and the protest must therefore be sustained.

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(T. D. 36583—G. A. 7940.)

*Flat envelopes composed of decorated writing paper.*

Flat envelopes composed of writing paper, the surface of which is covered with a design, fancy effect, pattern, or character, is properly dutiable under the provision in paragraph 324, tariff act of 1913, for "envelopes, * * * composed wholly

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or in chief value of any of the foregoing papers," rather than classifiable under the provision in paragraph 327 of said act for "paper envelopes, folded or flat."

United States General Appraisers, New York, July 19, 1916.

In the matter of protest 797662 of F. B. Vandegrift & Co. against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

*Walden & Webster* (*Edward F. Jordan* of counsel) for the importers.

*Bert Hanson*, Assistant Attorney General (*Martin T. Baldwin*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; COOPER, G. A., not participating).

FISCHER, *General Appraiser:* The merchandise in question is described on the invoice as "Hurd's blue white club env." and was returned by the appraiser as consisting of "flat envelopes of writing paper with surf. design." Duty was levied thereon at the rate of 35 per cent ad valorem under the following provisions in paragraph 324 of the act of 1913:

* * * Uncoated papers, gummed, or with the surface or surfaces wholly or partly decorated or covered with a design, fancy effect, pattern, or character, whether produced in the pulp or otherwise except by lithographic process, * * * envelopes, and all other articles composed wholly or in chief value of any of the foregoing papers, not specially provided for in this section * * *.

It is alleged in the protest that said articles are properly dutiable at the rate of 25 per cent ad valorem under either paragraphs 326 or 332 of said act, or at the rate of 15 per cent ad valorem under the provision in paragraph 327 of said act for "paper envelopes, folded or flat, not specially provided for." But, in the brief filed herein by counsel for the importers, it is made perfectly plain that the only claim relied upon is that alleged under paragraph 327.

It is not disputed that the articles are flat envelopes; nor has any question been raised concerning the character of the paper of which they are composed, the importers apparently accepting as correct the appraiser's return that the articles are flat envelopes composed of writing paper with a surface design.

Moreover, it is also conceded by the importers that the language of the above-quoted portion of paragraph 324 furnishes the most specific provision in the present act for the particular kind of paper found in the envelopes in question.

Hence, it would seem to follow as matter of law that the *eo nomine* provision in said paragraph for envelopes composed of such paper is equally the most apt and accurate description of the present merchandise. Indeed, were the envelopes in question, as imported, folded instead of flat in shape, we fail to conceive how there could

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possibly have arisen any question whatever concerning their classification under the terms of paragraph 324.

It appears, however, that said provision merely mentions envelopes and makes no specific reference to flat envelopes. This, the importers contend, should be held to be indicative of a congressional purpose to exclude from the operation of the paragraph all envelopes which may be commercially known or recognized as flat envelopes, even though the latter may be composed wholly or in chief value of any of the papers specifically provided for in said paragraph.

We therefore have this question to determine: Does the term "envelopes," as used in paragraph 324, cover only folded envelopes, or does it also embrace flat envelopes?

That question was judicially determined in the case of Hunter *v.* United States (143 Fed., 914; T. D. 27067), wherein it was held that pieces of paper which had been cut into specific shapes and sizes for the purpose of being folded and gummed so as to constitute envelopes, and which were at the time of the passage of the tariff act of 1897 commercially known as flat envelopes, were properly dutiable under the provision in paragraph 399 of said act for "paper envelopes, plain," as claimed by the importers, rather than covered by the provision in paragraph 407 of said act for "manufactures of paper or of which paper is the component material of chief value," as classified by the collector.

We confess that we can find nothing in the language of paragraph 324 upon which to base any conclusion that Congress used the term "envelopes" with the intention that it should be construed as applying solely to folded envelopes.

It is true that paragraph 327, under which these importers claim, makes specific provision for envelopes, folded or flat, and that the tariff act of 1909 (par. 414) contained the following provision:

> Paper envelopes not specially provided for in this section, folded or flat, if plain, twenty per centum ad valorem; if bordered, embossed, printed, tinted, decorated, or lined, thirty-five per centum ad valorem.

It is our opinion, however, that the words "folded or flat" were inserted in the acts of 1909 and 1913 merely to meet and give legislative recognition to the ruling of the court in the Hunter case, *supra*, as well as to remove all possible ambiguity which might arise as to whether a provision for "envelopes" included flat as well as folded envelopes. Nor do we believe that Congress had any other or different purpose in mind in enacting the provisions of paragraph 324. It provided therein for a special class of envelopes, and it is hardly reasonable to assume, particularly in view of the decision in the Hunter case, that it was the intention of the lawmakers to exclude therefrom flat envelopes and to restrict the operation of the

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paragraph so as to make it cover only folded envelopes made of certain specified papers. If such was the intention we are satisfied that it would have been made clearly manifest by the use of appropriate language.

As it is, the only natural interpretation to be given the provision in paragraph 324 for "envelopes" is that it was intended to embrace all kinds of envelopes, folded or flat, composed wholly or in chief value of the class of papers referred to therein. If it were proper to hold that flat envelopes of decorated paper were excluded from paragraph 324 because of the *eo nomine* provision in paragraph 327, then with the same propriety should folded envelopes of decorated paper also be held to be more specifically covered by the latter paragraph, because the language thereof is just as specific and controlling with regard to folded envelopes as it is with respect to flat envelopes; but it would be absurd to ascribe to Congress any such ridiculous intention, particularly since the history of the legislation shows a manifest legislative intent to impose higher rates of duty on decorated envelopes than are exacted on plain envelopes.

In the analogous cases of Schade *v.* United States (5 Ct. Cust. Appls., 465; T. D. 35002—the decision in which affirmed the ruling of this board in G. A. 7552; T. D. 34353) the United States Court of Customs Appeals held certain frozen wheat, although unfit for human consumption, to be, nevertheless, properly classifiable as wheat, for the reason that the provision in the tariff for wheat was without limitation. Commenting upon the statutory rule there applicable, the court said:

> * * * The term is used in the tariff law without limitation, and therefore the court is bound to hold included therewithin for dutiable classification in the absence of an established trade usage every kind and description of wheat. It is a general term, and the rule long established in tariff interpretation is that where a general term is used in the law without qualification it must, in the absence of a contrary commercial custom, be applied in its broadest significance, including every kind and class of merchandise properly referable thereto, either directly or as a species the genus of which is embraced within the particular tariff nomenclature. United States *v.* Wells, Fargo & Co. (1 Ct. Cust. Appls., 158; T. D. 31211); United States *v.* Salomon (1 Ct. Cust. Appls., 246; T. D. 31277); Schoelkopf, Hartford & MacLagan (Ltd.) *v.* United States (71 Fed., 694.)

In harmony, therefore, with the decision of the court in the Hunter case, *supra*, we hold these flat envelopes to be embraced within a provision for envelopes, and being of the particular class of envelopes for which specific provision is made in paragraph 324, we accordingly hold them to be properly dutiable thereunder at the rate of 35 per cent ad valorem, as classified by the collector.

The protest is therefore overruled in all respects and the decision of the collector is affirmed.

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(T. D. 36584—G. A. 7941.)

*Braids.*

PLAIN OR ORNAMENTAL BRAIDS—FABRICS WITH FAST EDGES.

Braids composed of cotton or of cotton and india rubber, and which were made on a braid machine, are properly dutiable at the rate of 60 per cent ad valorem under the provision in paragraph 358, tariff act of 1913, for "braids * * * made * * * on any braid machine," rather than under the provision in paragraph 262 of said act for "fabrics with fast edges not exceeding 12 inches in width," it being held that the provision in said paragraph 358 for "braids * * * made * * * on any braid machine, knitting machine, or lace machine" is not limited to braids of an ornamental character.

United States General Appraisers, New York, July 19, 1916.

In the matter of protest 760559 of Poirier & Lindeman Co. against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

*Walden & Webster* (*Henry J. Webster* of counsel) for the importers.

*Bert Hanson*, Assistant Attorney General (*Martin T. Baldwin*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers); COOPER, G. A., not participating.

HOWELL, *General Appraiser:* The goods in question are plain braids composed wholly of cotton or of cotton and india rubber. They were assessed for duty at the rate of 60 per cent ad valorem under paragraph 358, tariff act of 1913. The following is the part of the paragraph which is material to the case:

358. * * * Braids, loom woven and ornamented in the process of weaving, or made by hand, or on any braid machine, knitting machine, or lace machine, and not specially provided for; * * * all of the foregoing of whatever yarns, threads, or filaments composed.

The importers claim that the braids are dutiable at the rate of 25 per cent ad valorem under that portion of paragraph 262 which reads as follows:

262. * * * Fabrics with fast edges not exceeding twelve inches in width, all of the foregoing made of cotton or other vegetable fiber, or of which cotton or other vegetable fiber is the component material of chief value, or of cotton or other vegetable fiber and india rubber, and not embroidered by hand or machinery.

Concededly the articles are braids that were made on a braid machine. The importers claim, however, that the provisions for "braids" in paragraph 358 should be limited to braids of an ornamental character, and that plain braids such as these here in question are not *ejusdem generis* with the other articles named in paragraph 358. They also contend that these plain braids meet all the requirements of paragraph 262, in that they have fast edges, are under 12

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inches in width, are composed of cotton and india rubber, and are not embroidered by hand or machinery, and therefore they are more specifically provided for in that paragraph. We think the importers' position is untenable. Applying the well-recognized doctrine that an *eo nomine* provision is more specific than one of general description, it must be held that the provision for "braids * * * made * * * on any braid machine" is more specific than a provision for "fabrics with fast edges not exceeding twelve inches in width." The fact that the words "not specially provided for" appear in paragraph 358 and do not appear in paragraph 262 does not lessen the relative specificity of the modified provision itself when contrasted with other competing provisions. Arthur *v.* Lahey (96 U. S., 112); Loewenthal *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464) and cases therein cited.

We find nothing in the language of paragraph 358 indicating that the provision for "braids * * * made * * * on any braid machine" is to be limited to ornamental braids. In fact, quite the contrary is indicated, as the Assistant Attorney General suggests, for the unqualified provision for "braids * * * made * * * on any braid machine" is directly coupled with the provision for "braids, loom woven," which is limited to such braids as are "ornamented in the process of weaving." This specific provision for "braids, loom woven and ornamented in the process of weaving," was evidently inserted with the purpose of clearly including within the paragraph featherstitch braids, which, although loom woven, are commercially known as "braids," and have been held to be dutiable as such. United States *v.* Baruch (223 U. S., 191; T. D. 32300), affirming the decision of this board in Baruch's case, Abstract 12333 (T. D. 27545). And while thus distinctly confining the provision for "braids, loom woven," to such as are ornamental, Congress expressly refrained from placing any such limitation upon the provision for braids made on braid machines. The provision for such braids is unlimited, and we do not think it is to be restricted to braids which are ornamented upon the theory advanced by counsel for the importers that only ornamental braids are *ejusdem generis* with the articles provided for in paragraph 358. The paragraph is not confined to articles of an ornamental character, for it will be observed that it provides, among other things, for nets, nettings, and veilings, and such articles are dutiable under the paragraph regardless of whether or not they are ornamental. United States *v.* Mills & Duflot (5 Ct. Cust. Appls., 534; T. D. 35178); *In re* H. A. Caesar & Co., G. A. 7746 (T. D. 35563); *In re* E. C. Carter & Son, G. A. 7782 (T. D. 35748).

Braids of the character of those here in question were classified for duty under the provisions for cotton braids in the tariff acts of 1897

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and 1909, which provisions were placed in the same paragraphs with laces, trimmings, etc., and it must be presumed that Congress was familiar with such classification, and in again providing for them with the same group of articles without any limitation, except as to loom-woven braids, that it adopted the interpretation which had been placed upon the earlier statutes.

For the foregoing reasons the protest is overruled.

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(T. D. 36585—G. A. 7942.)

*Earthenware vase and panels decorated with mineral pigments.*

EARTHENWARE VASE AND PANELS DECORATED WITH MINERAL PIGMENTS—PAINTINGS—MECHANICAL PROCESS—WORKS OF ART.

An earthenware vase and five earthenware panels, decorated with paintings done with mineral pigments, the articles being afterwards fired in a kiln in order to fix and intensify the colors, are not free of duty under paragraph 652, tariff act of 1913, as "original paintings in * * * mineral * * * colors," being excluded from that paragraph by virtue of the provision therein that the word "painting," as used in the paragraph, shall not be understood to include any articles "made wholly or in part by stenciling or any other mechanical process." The firing to which these objects have been subjected is considered a mechanical process. *In re* Bour & Bouillon, G. A. 3211 (T. D. 16422), affirmed in Bour *et al. v.* United States (91 Fed., 533); and *In re* Stone & Co., G. A. 3219 (T. D. 16430) followed.

Neither are the articles in question works of art under the provision in paragraph 376 for "works of art, including paintings in oil or water colors, pen and ink drawings, or copies, replicas or reproductions of any of the same," the word "including," as used in the quoted phrase, being held a word of limitation, and therefore no articles are provided for in the paragraph except such as are enumerated following the word "including." Paintings in mineral colors are not so enumerated. *In re* American Express Co., G. A. 7643 (T. D. 34929) followed.

United States General Appraisers, New York, July 19, 1916.

In the matter of protest 791163 of Wells Fargo & Co. against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

*John Quinn* for the importers.

*Bert Hanson*, Assistant Attorney General (*Robert Hardison*, special attorney), for the United States.

Before Board 3 (WAITE and HAY, General Appraisers).

WAITE, *General Appraiser:* The goods imported in this case, over which controversy has arisen, are invoiced as follows: "Rouault, 1 large vase, 1,000 francs; Rouault, 5 panels (tile ware), average 280 francs." The appraiser, whose return was followed in the assessment of duty, reports as follows:

The merchandise consists of one large vase and five panels or plaques, painted, the painting on which may be original. It was returned for duty as painted earthenware vases and plaques at 40 per cent ad valorem, paragraph 79, act of 1913.

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The collector says in his report:

The merchandise referred to herein was assessed with duty in accordance with the advisory classification returned by the appraiser on the invoice, and more particularly described in the special report herewith.

The importers protest as follows:

We protest against your assessment of duty at the rate of 40 per cent on one large vase and five panels valued at francs, 2,400, claiming same to be free of duty as originals and covered by certificates on file with entry, under paragraph 652 of the act of October 3, 1913.

We also make the alternative claim that if same are dutiable they should come under the provisions of paragraph 376 at the rate of 15 per cent as works of art in mineral colors worked by hand and not by any mechanical process, but the work of a professional artist.

The vase and three of the paintings were produced at the hearing. They appear to be earthenware; the five panels are painted upon one side with a painting in mineral pigments. The vase is also painted externally with mineral pigments. Paragraph 79 of the tariff act of 1913, under which they were assessed, reads as follows:

79. Earthenware and crockery ware composed of a nonvitrified absorbent body, including white granite and semiporcelain earthenware, and cream-colored ware, and stoneware, including clock cases with or without movements, pill tiles, plaques, ornaments, toys, charms, vases, statues, statuettes, mugs, cups, steins, lamps, and all other articles composed wholly or in chief value of such ware; if plain white, plain yellow, plain brown, plain red, or plain black, not painted, colored, tinted, stained, enameled, gilded, printed, ornamented or decorated in any manner, and manufactures in chief value of such ware not specially provided for in this section, 35 per centum ad valorem; if painted, colored, tinted, stained, enameled, gilded, printed, or ornamented or decorated in any manner, and manufactures in chief value of such ware not specially provided for in this section, 40 per centum ad valorem.

The first and principal claim of the importers is for free entry under paragraph 652, and their alternative claim is for assessment at 15 per cent ad valorem under paragraph 376.

These paragraphs are in the following language:

652. Original paintings in oil, mineral, water, or other colors, pastels, original drawings and sketches in pen and ink or pencil and water colors, artists' proof etchings unbound, and engravings and woodcuts unbound, original sculptures or statuary, including not more than two replicas or reproductions of the same; but the terms "sculpture" and "statuary" as used in this paragraph shall be understood to include professional productions of sculptors only, whether in round or in relief, in bronze, marble, stone, terra cotta, ivory, wood, or metal, or whether cut, carved, or otherwise wrought by hand from the solid block or mass of marble, stone, or alabaster, or from metal, or cast in bronze or other metal or substance, or from wax or plaster, made as the professional productions of sculptors only; and the words "painting" and "sculpture" and "statuary" as used in this paragraph shall not be understood to include any articles of utility, nor such as are made wholly or in part by stenciling or any other mechanical process; and the words "etchings," "engravings," and "woodcuts" as

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used in this paragraph shall be understood to include only such as are printed by hand from plates or blocks etched or engraved with hand tools and not such as are printed from plates or blocks etched or engraved by photochemical or other mechanical processes.

376. Works of art, including paintings in oil or water-colors, pastels, pen-and-ink drawings, or copies, replicas or reproductions of any of the same, statuary, sculptures, or copies, replicas or reproductions thereof, and etchings and engravings, not specially provided for in this section, 15 per centum ad valorem.

As stated above, the painting upon these different articles is done with mineral pigments, and in order to complete the same the article has to be fired; that is, placed in a kiln and subjected to sufficient heat to vitrify the surface, thus fixing the painting permanently and giving the surface of the painting a smooth, glassy appearance. It also has the effect of intensifying and brightening the colors.

The language of paragraph 652, so far as it applies to articles similar to these, is, "original paintings in oil, mineral, water, or other colors." And the paragraph further provides, it will be observed, that the word "painting" as used in the paragraph "shall not be understood to include any articles of utility, nor such as are made wholly or in part by stenciling or any other mechanical process." Because of such provision we think the articles in question can not be classified under paragraph 652, for it has been held by the board that the firing to which they have been subjected is a mechanical process. Note *In re* Bour & Bouillon, G. A. 3211 (T. D. 16422), affirmed in Bour *et al. v.* United States (91 Fed., 533); and *In re* Stone & Co., G. A. 3219 (T. D. 16430).

The only question, then, is to decide whether these articles with the paintings upon them should be assessed at 15 per cent ad valorem as works of art under paragraph 376 above quoted. Eliminating the language that does not apply to illustrate the point, we observe that paragraph 376 provides for "works of art, including paintings in oil or water colors, pastels, pen and ink drawings," etc. The articles before us are not paintings in oil or water colors, but are paintings done with mineral pigments. The board, General Appraiser Fischer writing the opinion, held in the case of American Express Co., G. A. 7643 (T. D. 34929), that the word "including" in paragraph 376 is a word of limitation, and that therefore no articles are provided for in the paragraph except such as are enumerated following the word "including." In accordance with that decision we must hold that as mineral paintings, even though they may be considered works of art, are not included in the list of articles or works of art enumerated in paragraph 376, the importations in question are not provided for under that paragraph.

The protest is overruled.

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(T. D. 36586—G. A. 7943.)

*Shovels, not agricultural implements.*

Shovels having round-pointed or square-pointed polished-metal scoops or blades and with either long or D-shaped handles are properly dutiable under paragraph 167 of the act of 1913 as manufactures of metal not specially provided for rather than classifiable free of duty under paragraph 391 of said act as agricultural implements.

United States General Appraisers, New York, July 19, 1916.

In the matter of protests 794701, etc., of C. J. Tower against the assessment of duty by the collector of customs at the port of Buffalo.

[Affirmed.]

*Crim & Wemple* (*William L. Wemple* and *G. C. Winne*, of counsel), for the importer.
*Bert Hanson*, Assistant Attorney General (*Martin T. Baldwin* and *Harry M. Farrell*, special attorneys), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; COOPER, G. A., not participating).

FISCHER, *General Appraiser:* The merchandise in question consists of shovels having round-pointed or square-pointed polished-metal scoops or blades and with either long or D-shaped handles. Duty was levied thereon at the rate of 20 per cent ad valorem under paragraph 167 of the act of 1913 as manufactures of metal not specially provided for. It is claimed that said articles are properly entitled to free entry under paragraph 391 of said act as agricultural implements.

Precisely what constitutes an agricultural implement within the meaning of paragraph 391 has been judicially determined and definitely settled by the decision of the United States Court of Customs Appeals in United States *v.* Boker (6 Ct. Cust. Appls., 243; T. D. 35472), a case which involved the classification under the present tariff act of certain hedge shears used principally in trimming hedges. It was therein held that before an article may be deemed to be entitled to the benefits of free entry under said paragraph it must necessarily be conclusively established that it is chiefly employed in agricultural operations which serve to minister to human and, incidentally, animal subsistence—the substantial requirements of life (food) and possibly man's comfort (raiment), and not the merely pleasurable pursuits; the necessities and not the essentially pleasurable or ornamental. And because the hedge shears there involved were not shown to have been chiefly so employed the court held that they were not properly classifiable as agricultural implements within the meaning of paragraph 391.

Furthermore, in there enunciating the rule of statutory construction which should govern the classification of articles under said paragraph, the court said:

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All these considerations imply and necessitate that the use of the implement must determine its classification whether or not an agricultural implement within the paragraph, and that that use and the determinative fact is chief use.

Again, in the subsequent case of Quirk *v.* United States (6 Ct. Cust. Appls., 444; T. D. 35983), the same tribunal, in excluding from the paragraph certain budding and pruning knives, said:

If we were to assume that the real question is, as the importer suggests, one of fact, viz: Are these knives chiefly used as agricultural implements? the importers can not prevail because such use is not established.

Obviously, then, before the present importers can hope to have sustained the allegation in their protest that the particular varieties of shovels here under consideration are agricultural implements within the meaning of paragraph 391, as that meaning has been judicially interpreted by the court, it is clearly incumbent upon them to conclusively establish as a fact that said shovels are chiefly used in agricultural pursuits which have to do with the raising of crops, in agricultural operations which contribute toward supplying man and beast with the substantial requirements of life in the shape of food, or in ministering to man's comfort in furnishing him with clothing.

Does the proof offered herein on behalf of the importers affirmatively establish that the shovels in question are agricultural implements by reason of the fact that they are chiefly so employed? We think not. On the contrary, considering the evidence submitted as a whole, we are fully satisfied that the opposite contention has been clearly established, to wit, that these and like shovels are chiefly employed in operations other than agricultural in character, such as mining, building, railroad construction and repair work, in digging excavations, ditches, trenches, postholes, etc. The fact that the record discloses that shovels of the kind here in question are sold to hardware dealers in agricultural districts furnishes no proof that they are actually used, or are primarily designed and intended to be used, as agricultural implements in the sense indicated by the court. Such dealers may, and in all likelihood do, handle many articles and implements which they sell to farmers, but it does not necessarily follow that those particular articles become *ipso facto* agricultural implements.

Moreover, it may be conceded that practically all farmers possess shovels as indispensable implements in the digging of postholes for fences and in excavating ditches, trenches, and the like. As a hand tool or implement peculiarly adapted for removing dirt, there is no question but that the shovel is just as admirably suited to the needs of the farmer in that respect as to the requirements of the railroad or subway contractor. We believe it to be a matter of common knowledge, and a fact of which the board is certainly

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entitled to take judicial notice, that the implement which probably most resembles the shovel, but which is actually and chiefly employed as an agricultural implement, in that it is principally used to prepare the soil for planting or transplanting, is the spade.

In the case of Belknap Hardware & Manufacturing Co., wherein the same question here presented was passed upon, the board, in Abstract 39422, said:

The testimony of the importer's witnesses falls far short of establishing that the shovels in question are chiefly used in agricultural pursuits. Shovels have such wide and varied uses that to prevail under paragraph 391 it must be conclusively shown that they are agricultural implements by reason of being chiefly employed as such.

Also, in the matter of protest 785472 of M. White, this board had before it the question whether certain D-handled spades were agricultural implements as those words are used in paragraph 391. On the record there presented the board held, in G. A. 7901 (T. D. 36383), that spades were agricultural implements by reason of the fact that they were chiefly so employed. Hence, in the ruling in that case the board concurred in the views expressed by the Treasury Department in its letter of instructions dated August 9, 1915, addressed to the collector of customs at New York, and published as T. D. 35643, wherein it said:

It appears from an investigation of this subject made by the department that spades, both long-handled and D-handled, and whether polished or black, are chiefly used for agricultural purposes, and that ordinary shovels, both the polished and the black and both the long-handled and the D-handled, are chiefly used for purposes other than agricultural.

Inasmuch, therefore, as the importers in the case at bar have wholly failed to prove that these shovels are agricultural implements by virtue of the fact that they are chiefly so used, and for the reason that the evidence offered by the Government positively shows that they are used principally for purposes other than agricultural, we follow our ruling in Abstract 39422, *supra*, and hold the shovels in question to have been properly excluded from paragraph 391, and to be dutiable at the rate of 20 per cent ad valorem under paragraph 167 as manufactures of metal, as classified by the collector.

The protests are therefore overruled in all respects and the decision of the collector in each instance is affirmed.

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(T. D. 36587—G. A. 7944.)

*Cattle-hair felt.*

A certain felted fabric in chief value of cattle hair, imported in rolls and used for under-carpeting, is properly dutiable under the provision in paragraph 288, tariff act of 1913, covering "cloths if made in chief value of cattle hair, * * * 25

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per centum ad valorem," and not under another provision of said paragraph covering "felts not woven, * * * wholly or in chief value of wool, * * * 35 per centum ad valorem."

## United States General Appraisers, New York, July 21, 1916.

In the matter of protest 783742 of F. B. Vandegrift & Co. against the assessment of duty by the collector of customs at the port of Philadelphia.

[Reversed.]

*Comstock & Washburn* (*J. Stuart Tompkins* of counsel) for the importers.

*Bert Hanson*, Assistant Attorney General (*Thomas J. Doherty*, special attorney), for the United States.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers; Sullivan, G. A., not participating).

Brown, *General Appraiser:* This suit is brought to determine the proper classification of certain merchandise invoiced as "grey underfelt."

It was classified under paragraph 288, act of 1913, as—

Felts, not woven, * * * wholly or in chief value of wool, * * * 35 per centum ad valorem.

It is claimed to be dutiable under paragraph 302, reading:

Carpets and carpeting of wool or cotton, or composed in part of either of them, * * * 20 per centum ad valorem.

Or under paragraph 288, as—

Cloths if made in chief value of cattle hair or horse hair, not specially provided for in this section, 25 per centum ad valorem.

The testimony shows that this merchandise is imported in long rolls, 1½ yards wide, in pieces of about 70 yards to a roll. It is used for under-carpeting; that is, to place under carpets or rugs. It is admitted that it is in chief value of cattle hair, and there is no evidence in the record as to what the remainder of it consists. The official papers show that the theory of classification is as a wool felt, by similitude.

Under the act of 1909, certain wool felts used for polishing glass, composed of cattle hair, were held, by similitude of use alone, to be classifiable as wool felts. Pittsburgh Plate Glass Co. *v.* United States (2 Ct. Cust. Appls., 389; T. D. 32162). There was no testimony in that case to show any similitude in quality, texture, or material, and it is a matter of common knowledge that in quality, texture, and material cattle hair is essentially different from wool. There is no proof in the case at bar of any similar use of the merchandise to a particular wool felt.

In the act of 1913 Congress added a provision for cattle-hair cloth, inserting it, at a lower and different rate of duty, in the same para-



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graph which covers felts, not woven, and cloths wholly or in chief value of wool, plainly intending to separately classify cattle-hair goods, so far as the word "cloth" would accomplish that purpose.

There is no legally sufficient evidence of commercial nomenclature in this record, and therefore classification must be made on the common meaning of the terms used. If, then, the article in controversy can fairly and reasonably be denominated as cloth of cattle hair under the common meaning of the term cloth, it is to be so classified.

The Century Dictionary, after describing "felt" and "cloth," adds a further term, namely, "felt cloth," which it describes as "cloth made of wool matted together without weaving." And the Standard Dictionary defines a cloth as—

> A fabric woven felted, or knit of cotton, wool, silk, flax, hair, jute, hemp, or ramie, adapted to be made up into garments or for other use.

It is further a matter of common knowledge that billiard-table covers, so-called silent cloth, used to put under table covers to prevent the noise of the dishes and to protect against their heat, soft felt hats, desk covers, and similar articles are made from fabrics which would properly be described as felt cloths.

It would seem, therefore, that the merchandise in dispute coming, as it does, in rolls as cloth is handled, and to be cut into shape for use under carpets, would also come under the term cloth, as above defined and explained. And it would seem reasonable to suppose that Congress in adding the term "cloth made of cattle hair" in the act of 1913 intended to use the term "cloth" in its broadest sense as defined in the dictionaries, for otherwise different rates of duty would apply to various cattle-hair fabrics when there would be no apparent reason for such differentiation, and if there was, it would have resulted in the insertion of several different cattle-hair provisions.

This being the case, we hold that the merchandise here in question is included within the term "cloth of cattle hair" and the alternative claim in the protest to that end is sustained.

So far as the first claim in the protest as carpet or carpeting made in whole or in part of wool is concerned, and assuming for that purpose that the minor portion of this merchandise consists of wool (although the record is not clear in that regard), and assuming also that it is properly designated as carpeting, still that claim would not apply because the provision for "cloth made of cattle hair" is more specific both as to the material of chief value, cattle hair, and as to the form in which it appears, cloth.

Judgment is therefore rendered in favor of the importers' alternative claim under paragraph 288 at 25 per cent ad valorem, and the protest to that end sustained.

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(T. D. 36588—G. A. 7945.)

*Surface-coated paper suitable for covering boxes.*

Paper coated with a solution of powdered tin and suitable for use in covering the edges of boxes is properly dutiable under the provision in paragraph 324, act of 1913, for "papers with coated surface or surfaces suitable for covering boxes," rather than under the provisions in said paragraph for "papers wholly or partly covered with metal leaf," or "paper with coated surface or surfaces not specially provided for."

United States General Appraisers, New York, July 22, 1916.

In the matter of protest 300066 of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

*Crim & Wemple* (*George C. Winne* of counsel) for the importers.

*Bert Hanson*, Assistant Attorney General (*Martin T. Baldwin*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; COOPER, G. A., not participating).

FISCHER, *General Appraiser:* This protest covers merchandise which is described on the invoice as "plain tinfoil paper," and by the appraiser in his special report as "paper coated with a solution of tin, suitable for covering boxes and used for that purpose." Duty was levied thereon at the rate of 40 per cent ad valorem under the following provisions in paragraph 324 of the act of 1913:

Papers with coated surface or surfaces suitable for covering boxes, not specially provided for, whether or not embossed or printed except by lithographic process.

The importers allege in their protest that "said merchandise is not dutiable as assessed. It is dutiable at 25 per cent ad valorem under the first clause of paragraph 324; or at 35 per cent ad valorem under the third clause of paragraph 324; or at 25 per cent under paragraph 328; or at 25 per cent ad valorem under paragraph 326; or at 25 per cent ad valorem under paragraph 332."

We have no means of determining which of these claims is the one specifically relied upon by the importers, nor have we been favored with a brief of their counsel so enlightening us. However, in so far as we are able to judge from the nature of the testimony introduced in their behalf, it would appear that the importers take the position that the paper in question is not suitable for covering boxes and hence is not covered by the specific provision in paragraph 324 for that particular class of surface-coated papers; that it is rather properly dutiable, and should have been classified by the collector under the provision in said paragraph for "papers wholly or partly covered with metal leaf or with gelatin or flock."

This latter claim, however, is rendered clearly untenable by virtue of the conclusive character of the testimony offered by the import-

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ers' own witness, wherein the coating on the surface of the paper in question is described as consisting of tin which has been ground into a powder—a sort of bronze powder—and then mixed with a kind of starch, after which it is pasted on white paper and allowed to dry and the whole calendered.

Surely, it requires no reasoning to show that powdered metal is an entirely different commodity than leaf metal, and that paper which has been covered or coated with the former can in no sense be considered as being included within the scope of a provision which reads, "papers wholly or partly covered with metal leaf." That particular claim alleged in the protest is therefore entitled to no further consideration.

As to the use and suitability for use of this paper, the testimony of the importers is equally conclusive. It shows that this particular kind of paper is employed for but one purpose, to wit, to be applied to the edges of cheap boxes with a view to producing an ornamental effect. At the hearing this use was illustrated by a box produced by the importers, but not offered in evidence herein, the edges of which were covered with a strip of this paper about an eighth of an inch in width. The importers contend that this use does not make the so-called edging paper a paper suitable for covering boxes within the meaning of the law.

Of course, with such contention we can not agree. The pertinent provision here involved embraces all "papers with coated surface or surfaces suitable for covering boxes, not specially provided for, whether or not embossed or printed except by lithographic process." Surely this language seems to be perfectly plain and unambiguous and susceptible of but one meaning. It is intended to include all surface-coated papers, except those lithographically printed, which may be suitable for use as box coverings. It is not clear to us how an importer can hope to evade paying the duty imposed on such papers merely by showing that his paper does not cover the entire outside surface of the box. If this construction of the provision were held to be the proper one, then the colored paper which happened to cover the rest of the box exhibited at the trial would be equally excluded from the operation of the provision simply because it did not cover the whole box.

Furthermore, we can conceive of a box with two or more kinds of surface-coated papers pasted thereon as a covering. Would each of such papers, by reason of the fact that it does not cover the entire outside surface of the box, lose its tariff identity as a surface-coated paper suitable for covering boxes? Such a construction would certainly do violence to the intention of the lawmakers as expressed in the language of the statute. It would in effect establish as the test of classification of such papers the appearance they may make

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upon the outside of the boxes, rather than the character of the paper itself and its suitability for use as a covering for boxes.

Carried to its logical conclusion, the contention of the importers would require that surface-coated paper which is used as a covering for the tops and sides of boxes should be excluded from the provision because it does not appear that the bottoms of the boxes were also covered with such paper. If a portion of a box is covered with surface-coated paper, it will not be denied that such paper is used as a covering for that box, at least to the extent it may be used to serve that purpose.

We find as facts (1) that the merchandise in question consists of paper with a coated surface, and (2) that it is suitable for covering boxes. We therefore hold it to be properly dutiable at the rate of 40 per cent ad valorem under paragraph 324, as classified by the collector.

Accordingly, the protest must be, and hereby is, overruled in all respects and the decision of the collector is affirmed.

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(T. D. 36589.—G. A. 7946.)

*Fertilizer.*

FERTILIZER—MANURE—GROUND LIMESTONE.

Ground limestone, the sole use of which is to fertilize the soil, is free of duty as a material used only for manure under the provisions of paragraph 499, act of 1913.

United States General Appraisers, New York, July 22, 1916.

In the matter of protests 804176, etc., of H. D. Spencer against the assessment of duty by the collector of customs at the port of St. Albans.

[Reversed.]

*Charles H. Blatchford* for the importer.

*Bert Hanson*, Assistant Attorney General (*Charles D. Lawrence*, special attorney), for the United States.

Before Board 3 (WAITE and HAY, General Appraisers).

HAY, *General Appraiser:* The merchandise which forms the subject of these protests is ground or pulverized limestone. It originated at Lime Ridge, Province of Quebec, Dominion of Canada, and was imported into the United States through St. Albans, Vt. The ultimate consignee was the Farmers' Union of the State of Maine, and it was imported by this organization to be used by the farmers in fertilizing the soil. It was assessed for duty as a mineral substance under the provisions of paragraph 81 of the act of 1913, and is claimed by the protestant to be free of duty under paragraph 499 as manure or substance used only for manure. In Baker & Co.'s case, G. A. 7257 (T. D. 31800), this paragraph of the law, or rather an identical paragraph, in the act of 1909 was construed, and the cases bearing

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upon the subject marshalled and reviewed. It was there held that the phrase "used only for manure" embraced within its meaning substances used in the manufacture of fertilizer and that the word "manure," as used in that paragraph of the law, was synonymous with "fertilizer." It was also held that the word "substances" as used in the act had a general rather than a special application and applied generally to the commodities of the kind described and not alone to the particular shipment which was the subject of protest.

The testimony shows that the commodity in question was ground to a fine powder by machinery from small pieces or chips of limestone that had been accumulating for 30 or more years near the limekilns of the exporting company. The commodity therefore is a by-product of the industry of manufacturing lime, which has been reduced to a powder, and the testimony shows that the purpose of so reducing it is to sell to the farmers.

So far as the testimony in this case discloses the sole and only use for the ground limestone which was imported here is as a fertilizer or plant food; that it is distributed over the soil together with other substances for the purpose of nourishing the soil, giving to the plants the chemical substance which they require and generally increasing the crop yield. The testimony shows that a like commodity is manufactured in the United States for the same purpose and sold and used in the same way. So far as the record discloses the commodity in question is not only not "commonly, practically, and profitably used" for purposes other than manure, but so far as can be ascertained from the record before us, there is no other use to which either the imported or the domestic-made commodity is put. See J. P. Hawes's case, Abstract 26390 (T. D. 31832).

The protests are therefore sustained and the collector directed to reliquidate the entries admitting the merchandise free of duty under paragraph 499.

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## *Abstracts of decisions of the Board of General Appraisers.*

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*Board 1*—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

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BEFORE BOARD 2, JULY 17, 1916.

**No. 40002.**—Protest 767263 of R. H. Macy & Co. (New York).

BEADED ARTICLES—SUFFICIENCY OF PROTEST.—Merchandise classified as silk or cotton net trimmings or ornaments, appliquéd, at 60 per cent ad valorem under paragraph 358, tariff act of 1913, is claimed dutiable as beaded articles at 50 per cent under paragraph 333.

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Opinion by HOWELL, G. A. Protest containing reasonable alternative claims held not to be invalid as multifarious. So-called sashes, gimps, buckles, tunics, ornaments, garnitures or fringes, dress trimmings or ornaments, composed of a silk net or cotton net foundation appliquéd with beads, were held properly classified under paragraph 358.

**No. 40003.**—Protests 768668, etc., of Morimura Bros. (New York and Seattle).

CANDY BOXES.—Candy boxes and hatchets classified as silk chief value at 45 per cent ad valorem under paragraph 318, tariff act of 1913, are claimed to be composed chiefly of paper or cotton and properly dutiable under various paragraphs.

Opinion by HOWELL, G. A. From the analyses it was found that silk is the component of chief value. The boxes in question were held properly classified under paragraph 318.

**No. 40004.**—Protest 770251 of Lines & Warne (New York).

FLANNELS—KNITTED SILK MUFFLERS.—Merchandise classified as wool cloth or wool dress goods at 35 per cent ad valorem under paragraph 288 or 290, tariff act of 1913, is claimed dutiable as flannels under paragraph 289. Knitted silk mufflers, fringed, classified as silk wearing apparel at 50 per cent under paragraph 317, are claimed dutiable at 40 per cent under paragraph 315.

Opinion by HOWELL, G. A. On the authority of G. A. 7772 (T. D. 35703) the flannels in question were held dutiable under paragraph 289. The knitted silk mufflers were held dutiable under paragraph 315. United States *v.* Lines (5 Ct. Cust. Appls., 552; T. D. 35193) followed.

**No. 40005.**—Protest 778441 of M. J. Corbett & Co. (New York).

BEADED SCARFS.—Scarfs classified as appliquéd wearing apparel are claimed dutiable as articles composed in chief value of beads at 50 per cent under paragraph 533.

Opinion by HOWELL, G. A. It was found that the articles in question are not appliquéd. They were held dutiable as articles composed in chief value of beads under paragraph 333. Loewenthal *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464) followed.

**No. 40006.**—Protests 793040, etc., of Bronston Bros. & Co. et al. (New York).

STRAW HATS, NOT BLOCKED.

HOWELL, *General Appraiser:* The articles in question consist of untrimmed straw hats. They were returned by the appraiser as being blocked, and were assessed for duty by the collector at the rate of 40 per cent ad valorem under paragraph 335, tariff act of 1913. The importers claim that the hats have not been blocked, and that they are properly dutiable at the rate of 25 per cent ad valorem under said paragraph 335. The pertinent provisions of paragraph 335 read as follows:

> Hats, bonnets, and hoods, composed wholly or in chief value of straw, * * * or manila hemp, whether wholly or partly manufactured, but not blocked or trimmed, 25 per centum ad valorem; if blocked or trimmed, and in chief value of such materials, 40 per centum ad valorem.

On the trial of the case the importers had admitted in evidence two sample hats which were taken from the importations in question. These hats are made from what appears to be Tuscan straw; have high crowns and wide brims, and in their condition as imported the hats are so limp and pliable that they do not retain any particular shape. The examiner who made the advisory classification of these hats at the time they were before him for appraisement, and who was the only witness called in the case, testified that they were not blocked hats; that although they were made over a block to give the necessary size to the crowns, the hats had to be put through a further process of blocking in order to give them size and shape, and to make them ready and suitable for the application of the trimming.

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One of the definitions of the verb *block*, as given in Webster's Dictionary, is "to shape on, or stamp with, a block; as, to *block* a hat."

From this definition it will be readily understood that the purpose of blocking a hat is to give it form and shape, and to make it ready and complete for the trimming which may be applied thereto. As already stated, the hats in question are lacking in stiffness, and are so pliable that when handled they fail to retain any particular shape. In their condition as imported the hats are without definite form and shape, and are not suitable to be trimmed and worn as hats without further manipulation to give them form, shape, and style.

We think the record and the form and condition of the hats as imported impel us to conclude that the hats are not blocked.

The protests are accordingly sustained.

**No. 40007.**—Protest 793943 of A. V. Heyliger (New York).

SILK VELVET RIBBONS.—Velvet ribbons classified as composed in chief value of silk at 50 per cent ad valorem under paragraph 314, tariff act of 1913, are claimed to be chiefly of cotton, dutiable at 40 per cent under paragraph 257.

Opinion by HOWELL, G. A. Protest unsupported; overruled.

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BEFORE BOARD 3, JULY 17, 1916.

**No. 40008.**—Protest 798920 of Alfred Richter (New York).

COMMISSIONS—LEGALITY OF LIQUIDATION.

HAY, *General Appraiser:* This is a protest against the liquidation of an entry by the collector, the protestant claiming that he erred in "treating a certain commission charged at the foot of the invoice as part of the dutiable value of the merchandise," and further claiming that said commission is no part of the dutiable value of the merchandise. The case is submitted upon the record as forwarded by the collector and a stipulation made and entered into between the attorney for the importer and the Assistant Attorney General. This stipulation reads as follows:

It is hereby stipulated that the testimony of the importer, if admitted in the record, would show—

That the item of commission on the invoice herein is strictly and truly a commission paid by the purchasers to Messrs. Reuter, Brockelmann & Co., of Tientsin, China, for acting as purchasing agents in behalf of said purchasers; that said item in no way relates to or forms part of any profit made by the sale of the merchandise in the Tientsin market; that said merchandise was bought from Chen Shao Lang, of Tientsin; and that the whole price paid therefor to the seller and the attendant charges and shipping charges are correctly set forth in the corrected consular invoice hereto annexed; that the annexed corrected consular invoice, certified August 24, 1915, relates to the shipment which is the subject of this protest; and that the A. Emanuel declaring as agent of the purchaser on the said invoice is a member of the firm of Reuter, Brockelmann & Co.

It is further stipulated that Messrs. Reuter, Brockelmann & Co. are the persons claiming and entitled to the commission in question, having acted as purchasing agents for a firm in Hamburg, Germany, and that the goods were ordered by and delivered to that firm and neither for nor to the importer who entered them at this port, who received them only as bailee for the purpose of transshipment to the purchasers in Hamburg; and that the goods have been exported accordingly, as the collector's indorsement on the protest shows.

It is further stipulated that the price and other items stated in the said corrected invoice state the correct market value of the importation and correctly state charges and shipping charges, all at the date of shipment. That the appraiser, in acting upon the invoice, disallowed the said commissions because the original consular invoice now with the entry incorrectly described Messrs. Reuter, Brockelmann & Co. as owners (or sellers), whereas in this corrected invoice, hereto annexed, they are correctly described as agents of the purchasers; and that the said corrected invoice is properly in the form of a consigned invoice and not in the form of a purchase invoice.

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In making this stipulation the Government reserves its objection to the competency of all the matters hereinbefore set forth, on the ground that the importer has obtained a reappraisement of this merchandise (No. 82142) wherein the general appraiser has affirmed the appraised value of the merchandise, and that that proceeding, not having been appealed from, and the action therein taken not being assailed in this protest, has become final and conclusive; further that the protest is defective in that it sets forth as follows:

"It (the commission in question) is paid to the importer by the seller for services rendered in disposing of the merchandise at this port and is not in any way a part of the foreign market value or the dutiable value of the shipment."

Which is not the fact.

As we understand the facts as stipulated by the parties litigant, the commission which it is claimed the collector included as part of the dutiable value was a commission paid by the purchaser and not the seller of the goods, the commissionaire being his agent and not the agent of the seller; hence this commission forms no part of the purchase price and, if the purchase price is the dutiable value, no part of the dutiable value of the merchandise. It is claimed, however, on the part of the Government, that the collector took duty upon the merchandise as appraised by the appraiser and reappraised by the general appraiser. We have, as part of the record in the case, the invoice upon which the appraiser's action is noted and the reappraisement sheet or return of the general appraiser. The return of the general appraiser is brief and simply states that the appraised value is affirmed. Whatever, therefore, is the appraised value of the merchandise is that upon which the collector should have collected duty, unless there were some costs or charges which it was his duty to add. The appraiser has marked on the invoice in red ink opposite a number of items the letter "D," indicating that in his judgment the items therein are dutiable. As a matter of strict law, there is no such thing as a dutiable item. The merchandise, and the merchandise alone, is dutiable, but whatever items go to make up the dutiable value should be included in the value of the merchandise. There is on the margin of the invoice a memorandum in red ink, apparently made by and also apparently signed by the appraiser, which reads as follows: "Deductions of items marked 'X,' disallowed as noted to make market value." This, while not very explicit, we understand to be the appraisement of the merchandise; that is, the items which the appraiser had marked "X" upon the invoice should be added back to the *per se* value of the merchandise in order to make market value. These items are washing, coolie hire, naphthalene, assorting, handshaking, and disinfecting. These are the only items that are marked with the "X." They, as well as some other items, are marked with the "D" also. The item of commission which bears the mark "D" is not marked with the "X," hence it does not come within the purview of the appraiser's action. We take it that the letter "D" opposite the word "commission" is simpy advice given to the collector and forms no part of the appraisal. The amount of the commission was therefore not added by the appraiser to make up the market value of the merchandise, hence is not embraced within the finding of the general appraiser, and, it appearing from the record that the commission in question was one paid by the purchaser and not the seller of the merchandise, we think the protest must be sustained. The protest is sustained and the collector will reliquidate the entry omitting from the dutiable value of the merchandise the item of commission.

**No. 40009.**—Protest 740239 of B. R. Anderson & Co. (Seattle).

ORANGE BOXES.—This protest relates to orange boxes tied in packages of two or more boxes each, classified under paragraph 220, tariff act of 1913, the question being, What is a package?

Opinion by HAY, G. A. Bush *v.* United States (6 Ct. Cust. Appls., 401; T. D. 35974), reversing Abstract 37295, followed as to packages of orange boxes. Protest sustained.

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**No. 40010.**—Protest 798959 of L. E. Doudiet & Co. (St. Paul).

TEA COVERINGS.—Certain containers of tea are claimed to be free of duty under paragraph 627, tariff act of 1913.

Opinion by HAY, G. A. Protest unsupported; overruled.

**No. 40011.**—Protest 800706-51912 of Sears, Roebuck & Co. (Chicago).

CLERICAL ERROR.—It is claimed here that certain items of commission were included by the importer in the entered value through clerical error.

Opinion by HAY, G. A. On the authority of United States *v.* Nozaki (5 Ct. Cust. Appls., 286; T. D. 34471), reversing Abstract 33927 (T. D. 33816), protest overruled.

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BEFORE BOARD 1, JULY 19, 1916.

**No. 40012.**—Protest 772802 of T. D. Downing & Co. (New York).

COAL-TAR PREPARATIONS—METALLIC SALTS.

MCCLELLAND, *General Appraiser:* The merchandise involved was returned by the appraiser as a coal-tar preparation and assessed with duty at 15 per cent under paragraph 21 of the tariff act of 1913. The grounds of objection to such classification are set forth in the protest as follows:

> Our contention is that this commodity is entitled to entry free of duty, under paragraph 452 of the tariff act of October 3, 1913, as "tar oil, or products of coal tar," known as "anthracene and anthracene oil," and is not dutiable under paragraph 21 of the tariff act as found by you.

When the case was called for hearing it was submitted for decision on the official record and sample. There does not appear to be any sample of the merchandise, but among the papers constituting the record are two reports of analyses made in the laboratory of the United States appraiser's office at the port of New York. These reports are substantially alike. The purpose of the analyses seems to have been to determine the distillation point and whether metallic salts were present in the sample. One of the reports shows that 8 per cent distilled over between 200 and 300 degrees Centigrade; 10 between 300 and 320 degrees with a residue of 82 per cent, and that zinc salts were found to be present.

This showing, coupled with the fact that the importers failed to offer any evidence in support of their protest, warrants the conclusion that the classification by the collector was correctly made.

The protest is overruled in all respects.

**No. 40013.**—Protest 748537 of Hirshbach & Smith (New York).

MOHAIR DRESS GOODS.—Dress goods classified as cloth in chief value of the hair of the Angora goat at 40 per cent ad valorem under paragraph 308, tariff act of 1913, is claimed dutiable as dress goods at 35 per cent under paragraph 290.

Opinion by BROWN, G. A. On the authority of Rosenberg *v.* United States (7 Ct. Cust. Appls., —; T. D. 36510) the dress goods in question was held properly classified under paragraph 308.

**No. 40014.**—Protest 776470 of Stern, Katzenstein & Stern (New York).

MOHAIR LININGS.—Linings or dress goods classified as mohair chief value at 40 per cent ad valorem under pargraph 308, tariff act of 1913, are claimed dutiable as coat linings or dress goods in chief value of wool at 35 per cent under paragraph 290.

Opinion by BROWN, G. A. The evidence submitted was held insufficient to establish the claim. Protest overruled. Rosenberg *v.* United States (7 Ct. Cust. Appls., —; T. D. 36510) cited.

**No. 40015.**—Protest 768202 of Britt, Loeffler & Weil (New York).

MALT FOODS.—Malt foods put up in packages of less than 2½ pounds gross weight, classified as a medicinal compound under paragraph 17, tariff act of 1913, are claimed dutiable as nonenumerated manufactured articles at 15 per cent under paragraph 385.

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Opinion by BROWN, G. A. On the authority of Britt *v.* United States (7 Ct. Cust. Appls., —; T. D. 36428) the malt foods in question were held properly classified under paragraph 17.

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BEFORE BOARD 3, JULY 19, 1916.

**No. 40016.**—Protests 745787, etc., of Thomas Nevin (New York).

MALT EXTRACT.

WAITE, *General Appraiser:* Protest is made in these cases against the assessment at 45 per cent ad valorem under paragraph 246, tariff act of 1913, of importations of malt extract in casks. The contention is that the merchandise is fluid malt extract, dutiable under the same paragraph at 23 cents per gallon. In protest 745787 the appraiser has described the merchandise covered by the protest as being an item of Kepler's malt extract, with glycerophosphoric acid, which was assessed at 25 per cent ad valorem under paragraph 18. It appears, however, from the testimony of the examiner and a perusal of the invoice that the merchandise protested upon is "concentrated malt extract," which was returned as malt extract in barrels at 45 per cent ad valorem under paragraph 246. The examiner testifies that this is the same as the malt extract held by the board in G. A. 7814 (T. D. 35896) to be dutiable as fluid malt extract, except that this is imported in casks instead of bottles. The appraiser's report was therefore evidently in error as to the character of the goods.

The protests have been submitted upon the following stipulation:

It is hereby stipulated and agreed, by and between the parties hereto, that the merchandise invoiced as concentrated malt extract, assessed at 45 per cent ad valorem under paragraph 246 of the tariff act of 1913, appearing upon invoices covered by the protests upon the annexed schedule A, is of the same character and description as the malt extract covered by protest 763382 of Britt, Loeffler & Weil, which was the subject of the board's decision reported in G. A. 7814, T. D. 35896, and affirmed by the Court of Customs Appeals in T. D. 36389.

That the malt extract appearing on the invoices covered by the protests upon the annexed schedule A is contained in tin lined barrels.

That the testimony introduced in the matter of protest 763382, together with the exhibits introduced therein, may be incorporated in and become a part of the record in the protests enumerated in said schedule A of this stipulation with the same force and effect as if said testimony were taken therein.

Whereas some of the invoices and entries covered by the protests in said schedule A do not appear to be accompanied by gauger's returns as to the quantity of malt extract imported, and whereas in those instances where gauger's returns are present the number of gallons reported to the barrel or cask varies from 28 gallons to 30 gallons, and whereas Examiner Van Etten has stated that all the malt extract covered by the protests in said schedule A is of the same kind, from the same manufacturer and shipper to the same importer, and that said malt extract is always contained in and shipped in substantially the same kind of casks or barrels (which statement is attested by said examiner's signature at the end of this stipulation), it is further stipulated and agreed that the collector may reliquidate all of the entries covered by the protests in said schedule A (under the decision of the board) upon the uniform basis of 29 gallons to the barrel or cask.

It is further stipulated that the claim for 5 per cent allowance under Section IV, paragraph J, subsection 7, is hereby abandoned.

The protests covered by said schedule A are submitted for decision upon this stipulation.

Reliquidation on the basis of 29 gallons to the barrel or cask is authorized as 23 cents per gallon upon the merchandise covered by the protests in schedule A which was assessed at 45 per centum ad valorem under paragraph 246. In all other respects the protests are overruled

**No. 40017.**—Protests 796442, etc., of M. Phillips & Co. (San Francisco).

RICE, CLEANED AND UNCLEANED.—Merchandise classified as cleaned rice at 1 cent per pound under paragraph 193, tariff act of 1913, is claimed to be dutiable as uncleaned rice at five-eighths of 1 cent per pound under the same paragraph.

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Opinion by WAITE, G. A. Upon the evidence presented one item was found to be uncleaned rice. This was held dutiable at five-eighths of 1 cent per pound under paragraph 193. Protests sustained in part.

**No. 40018.**—Protest 789087 of Parke, Davis & Co. (Detroit).

PARSLEY SEED—GERMINATION.—Parsley seed classified under paragraph 212, tariff act of 1913, is claimed to be entitled to free entry as a crude drug under paragraph 477.

Opinion by WAITE, G. A. From the evidence it was found that 81.5 per cent of the seed in question would germinate. It was held properly classified under paragraph 212. Abstract 36223 (T. D. 34677) followed.

**No. 40019.**—Protests 793875, etc., of Western Pacific Railroad Co. et al. (San Francisco).

TENNIS RACKETS—TOYS.

HAY, *General Appraiser:* These are protests claiming, among other things, that the collector erred in assessing duty upon merchandise invoiced as tennis rackets as toys under paragraph 342, and that they are properly dutiable as manufactures of wood under paragraph 176.

At the hearing of these protests the appraiser's report was admitted in evidence and the case submitted upon testimony. The testimony of the examiner of similar merchandise at the port of New York, and that of one other witness, was introduced. The testimony of the examiner amounts to little more than the statement that at the port of New York it was the practice to assess rackets measuring 7 inches or less from the crown to the foot—that is, whose longest string measures 7 inches or less—as toys under paragraph 342, and rackets of greater dimension according to their component of chief value. The testimony of the other witness amounted to little more than the identification of certain samples. As to protest 793877, the appraiser reports that items 58456, 58010, and 48320 are like items of the same number held by the board to be dutiable as manufactures of wood, and as to protest 793875, items 58010 and 48320 were also held dutiable as manufactures of wood by the board. As to the other items upon the invoices, the protests were submitted upon the record and the sample, which, in our judgment, is not sufficient upon which to base a finding in favor of the importer, there being nothing to show the component material of chief value. The claim in the protests under paragraph 176 is therefore sustained as to the respective items above enumerated. It is not intended by this to give judicial approval of the rule which the examiner stated controlled in the advisory classification by the appraiser. As to all other items and claims, the protests are overruled. The collector will reliquidate the entries accordingly.

**No. 40020.**—Protest 773083 of T. D. Downing & Co. (Boston).

PANAMA CANAL ACT.

HAY, *General Appraiser:* The merchandise in this case consists of glass gauges assessed for duty under the provisions of the tariff act of 1913 and claimed to be free of duty under section 5 of the Panama Canal act of August 24, 1912. Part of this importation was admitted free of duty under the provisions of section 5, but the part under protest was assessed with duty on account of the failure of the importers to comply with the regulations made by the Secretary of the Treasury. In J. A. Conkey & Co.'s case, G. A. 7668 (T. D. 35086), affirmed by the Court of Customs Appeals in United States *v.* J. A. Conkey & Co. (6 Ct. Cust. Appls., 492; T. D. 36123), it was held by this board that the regulations made by the Secretary pursuant to the authority granted him in section 5, *supra*, set forth in T. D. 32956, were unreasonable and hence void, and in lieu of compliance with the regulations oral evidence may be received to show the use of the merchandise in question. In the case at bar, however, it was admitted by the importer, in his testimony, that he did not know what disposition had been made of the merchandise by the navy yards to which he had shipped the

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merchandise, and that the only person who could answer this question was the storekeeper at the Brooklyn Navy Yard. No effort was made to secure the testimony of the storekeeper, and the record as it stands contains nothing that would disclose the use to which the merchandise in question was put. The protest is overruled.

**No. 40021.**—Protests 777097, etc., of J. S. Elliott et al. (Seattle, etc.).

TEA COVERINGS.—Tea coverings are claimed free of duty under paragraph 627, tariff act of 1913.

Opinion by HAY, G. A. On the authority of Wright *v.* United States (6 Ct. Cust. Appls., 528; T. D. 36147) certain tea containers were held free of duty under paragraph 627 as claimed.

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BEFORE BOARD 1, JULY 21, 1916.

**No. 40022.**—Protest 778747 of Morimura Bros. (New York.)

BAMBOO SPLASH MATS—CURTAINS—SCREENS.

MCCLELLAND, *General Appraiser:* The United States appraiser in his special report on this protest states that the merchandise consists of splash mats composed of bamboo which were returned as colored bamboo curtains and assessed with duty at the rate of 25 per cent ad valorem under paragraph 175 of the tariff act of 1913. The protest claims are that duty should have been assessed at the rate of 15 per cent ad valorem under paragraph 176, or in the alternative at 20 per cent under paragraph 368, but as no proof was offered as to the 20 per cent claim, and as it is expressly waived in the brief of counsel for protestants, it is overruled.

In the testimony the claims are limited to items 380/235, represented by Exhibit 1, and item 380/31, represented by Exhibit 2. Item 380/235 is shown by the official exhibit to be made of strips of bamboo fastened together with cord. It is in panel form, approximately 5 feet in length and 1 foot in width, with three pockets. Although there is little or no testimony as to this item, we find it to be what is known as a wall pocket. The other item, 380/31, is shown by Exhibit 2 to be what is commonly known as a splash mat, similar to that which was the subject of United States *v.* Butler Bros. (3 Ct. Cust. Appls., 390; T. D. 32984). In that case the court held such splash mats, in the absence of evidence showing commercial designation, to be curtains or screens.

In the trial of this case it is very evident the purpose of protestants' counsel was to establish by the testimony of witnesses experienced in handling such mats in a commercial way that there was such a commercial understanding as would justify a finding that they were known in trade and commerce as splash mats, and not as curtains or screens. There was no attempt on the part of the Government to controvert the testimony of these witnesses by calling others entertaining a different view. It is simply a question, therefore, whether the importers have succeeded in establishing such a commercial understanding of the term splash mats as would preclude articles such as item 380/31 from classification as curtains or screens.

It is well settled that statements of commercial understanding as to words or terms are not to be considered as controlling in classification of merchandise unless such commercial understanding is shown to be different from that of the same words or terms in ordinary speech, and we are satisfied that no such difference of understanding is shown by this record. Maddock *v.* Magone (152 U. S., 368); Swan *v.* Arthur (103 U. S., 597, 598); Acker *v.* United States (1 Ct. Cust. Appls., 328; T. D. 31431); and United States *v.* Walter (4 Ct. Cust. Appls., 95; T. D. 33371).

Even if all of the witnesses were agreed that, in their experience in the handling of these so-called splash mats, they were sold by that name, it does not necessarily follow that they do not fall within the definitions quoted by the court in United States *v.* Butler, *supra.* We do not deem that there is sufficient in the record to warrant us in attempting to distinguish the Butler case from the case at bar, and therefore the protest must be overruled as to the splash mats.

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As to item 380/235, however, we think the situation is different. There is no pretense of a claim that it is a splash mat. It is very evident from its dimensions that it is not designed for use as either a curtain or a screen, but rather as a wall decoration. Therefore, being concededly in chief value of wood it is properly subject to duty at the rate of 15 per cent ad valorem under paragraph 176, as claimed.

The decision of the collector is modified accordingly.

**No. 40023.**—Protests 770688, etc., of Harshaw, Fuller & Goodwin Co. (Cleveland).

BONE BLACK.—Merchandise invoiced as animal black, classified as a pigment at 15 per cent ad valorem under paragraph 53, tariff act of 1913, is claimed entitled to free entry under paragraph 423 or 447.

Opinion by MCCLELLAND, G. A. The animal black in question is used as a bleaching material in the manufacture of cream of tartar and tartaric acid. It was held free of duty under paragraph 447, as claimed. Abstract 37560 followed.

**No. 40024.**—Protest 797844 of S. L. Jones & Co. (San Francisco).

GRASS FURNITURE.—Furniture classified as manufactures of grass at 25 per cent ad valorem under paragraph 368, tariff act of 1913, is claimed to be wood chief value, dutiable at 15 per cent under paragraph 176.

Opinion by MCCLELLAND, G. A. Protest unsupported; overruled.

**No. 40025.**—Protest 801359 of S. L. Jones & Co. (San Francisco).

CHAIR CANE.—The appraiser returned the merchandise in question as wrought chair cane. It was classified at 10 per cent ad valorem under paragraph 173, tariff act of 1913, and is claimed entitled to free entry under paragraph 648.

Opinion by MCCLELLAND, G. A. Protest unsupported; overruled.

**No. 40026.**—Protest 798246–58623 of International Forwarding Co. (Chicago).

IMMORTELLES.—Colored and dyed immortelles classified at 60 per cent ad valorem under paragraph 347, tariff act of 1913, are claimed dutiable by similitude as preserved and cut flowers at 25 per cent under paragraph 210.

Opinion by MCCLELLAND, G. A. Upon stipulation of counsel the immortelles in question were held dutiable under paragraph 210. Bayersdorfer *v.* United States (7 Ct. Cust. Appls., —; T. D. 36390) followed.

**No. 40027.**—Protest 793561 of National Pole Co. (Duluth).

PAVING POSTS.—Merchandise entered as cedar posts and cedar fence posts, classified as paving posts at 10 per cent ad valorem under paragraph 170, tariff act of 1913, is claimed free of duty as fence posts under paragraph 647.

Opinion by MCCLELLAND, G. A. Protest unsupported; overruled.

**No. 40028.**—Protest 765712 of Lamont, Corliss & Co. (New York).

SMELLING SALTS—TALCUM POWDER.—Talcum powder classified as a toilet preparation at 60 per cent ad valorem under paragraph 48, tariff act of 1913, is claimed dutiable at 15 per cent under paragraph 69. Smelling salts put up in small packages, classified as a medicinal preparation under paragraph 17 is claimed dutiable under paragraph 5 under the provision for "chemical and medicinal compounds, preparations, mixtures, and salts."

Opinion by BROWN, G. A. On the authority of G. A. 7800 (T. D. 35844), affirmed in Roger *v.* United States (7 Ct Cust, Appls., —; T. D. 36424), the talcum powder was held properly classified as a toilet preparation under paragraph 48. On the record the protest was overruled as to the smelling salts classified under paragraph 17.

**No. 40029.**—Protest 802331 of G. A. & E. Meyer (New York).

VARNISH.—Varnish put up in bottles or other packages of less than 2½ pounds gross weight, classified as a chemical compound at 20 per cent ad valorem under paragraph 17, tariff act of 1913, is claimed dutiable as varnish at 10 per cent under paragraph 58.

Opinion by BROWN, G. A. On the authority of Abstract 39354 varnish was held not to come within the meaning of paragraph 17. The claim under paragraph 58 was sustained.

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**No. 40030.**—Protests 790040, etc., of E. McConnell & Co. (New York).

FLANNELS.—Merchandise classified as wool dress goods at 35 per cent ad valorem under paragraph 290, tariff act of 1913, is claimed dutiable as flannels at 25 or 30 per cent under paragraph 289.

Opinion by BROWN, G. A. The merchandise in question was held properly dutiable as flannels under paragraph 289. G. A. 7772 (T. D. 35703) followed.

**No. 40031.**—Protest 772008 of Katz, Fleisher & Co. (Boston).

MOHAIR COAT LININGS.—Mohair coat linings classified as cloth in chief value of the hair of the angora goat at 40 per cent ad valorem under paragraph 308, tariff act of 1913, are claimed dutiable as coat linings in chief value of wool at 35 per cent under paragraph 290.

Opinion by BROWN, G. A. On the authority of Rosenberg *v.* United States (7 Ct. Cust. Appls., —; T. D. 36510) the coat linings in question were held properly classified under paragraph 308.

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BEFORE BOARD 2, JULY 21, 1916.

**No. 40032.**—Protests 782453, etc., of Import Chemical Co. et al. (New York).

OXIDE OF ANTIMONY.—Compounds and oxides of antimony classified under paragraph 144, tariff act of 1913, are claimed dutiable as chemical compounds not specially provided for under paragraph 5.

Opinion by FISCHER, G. A. On the authority of United States *v.* Innis (7 Ct. Cust. Appls., —; T. D. 36254) and G. A. 7688 (T. D. 35142), it was found that antimony oxide is excluded from the provisions of paragraph 144. It was held dutiable under paragraph 5, as claimed. G. A. 7899 (T. D. 36364) cited.

**No. 40033.**—Protests 771125, etc., of Debenham, Gardiner & Co., and protests 782312, etc., of Urchs & Hegener (New York).

SILK MOURNING CRAPES—CRAPE BANDS.—Silk mourning crapes classified as silk veilings or trimmings at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as woven silk fabrics in the piece at 45 per cent under paragraph 318.

Opinions by HOWELL, G. A. Merchandise invoiced as "English crape" or "crepe Anglais" was held dutiable as woven silk fabrics under paragraph 318. Auffmordt *v.* United States (7 Ct. Cust. Appls., —; T. D. 36320) followed. Woven crape bands, measuring 1 to 2 inches in width, made from silk crape folded to make a tubular ribbon effect, imported in lengths of about 20 yards, were held properly classified as trimmings under paragraph 358.

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(T. D. 36590.)

*Drawback on ammunition boxes.*

Drawback on ammunition boxes manufactured by the Horatio Hickok Co., of Burlington, Vt., with the use in part of partition pieces made of imported hardwood lumber.

TREASURY DEPARTMENT, *July 26, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on ammunition boxes manufactured by the Horatio Hickok Co., of Burlington, Vt., in part with the use of partition pieces made of imported hardwood lumber.

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A manufacturing record shall be kept by the company, in accordance with the sworn statement dated June 17, 1916, which is transmitted herewith for filing in your office, which will show the number of sets of partition pieces used in the manufacture of each box and the total number of completed boxes, and also the identity of imported parts. An abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the number of imported partition pieces of each kind appearing in the boxes exported, as shown by the abstract from the manufacturers' record.

Drawback may be allowed under these regulations on ammunition boxes exported on and after April 19, 1916.

Respectfully, WM. P. MALBURN,
(103766–4.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *St. Albans Vt.*

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(T. D. 36591.)

*Permissible political activity of presidential appointees.*

[Circular No. 61.]

TREASURY DEPARTMENT, *July 27, 1916.*

*To all officers in the Treasury Department holding any presidential appointment:*

Presidential appointees are forbidden by statute to use their official authority or influence to coerce the political action of any person or body, to make any contribution for a political object to any other officer of the United States, or to solicit or receive contributions for political purposes or to discriminate among their employees or applicants for political reasons.

Otherwise a presidential appointee will be allowed to take such a part in political campaigns as is taken by any private citizen, except that he will not be permitted—

1. To hold a position as a member or officer of any political committee that solicits funds.
2. To display such obtrusive partisanship as to cause public scandal.
3. To attempt to manipulate party primaries or conventions.
4. To use his position to bring about his selection as a delegate to conventions.
5. To act as chairman of a political convention.
6. To assume the active conduct of a political campaign.
7. To use his position to interfere with an election or to affect the result thereof.
8. To neglect his public duties.

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It is not intended that Government service shall curtail or interfere with the exercise of a person's civic rights and duties as a citizen.

W. G. McAdoo, *Secretary of the Treasury.*

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(T. D. 36592.)

*Entry of merchandise for exportation.*

**Merchandise may be entered for immediate exportation or transportation and exportation when satisfactory evidence is presented to the collector that the merchandise is destined for a foreign country. Merchandise subject to a specific rate of duty may be withdrawn from warehouse for immediate exportation at the entered quantities. When entered for immediate transportation and exportation the quantities should be ascertained at the original port.**

Treasury Department, *July 27, 1916.*

Sir: The department refers to your letter of March 7, 1916, recommending that articles 247 and 694 be amended so as to permit entry for warehouse and immediate export or transportation and exportation of merchandise, whether or not the invoice, bill of lading, or other documents show the merchandise to be destined for a foreign country.

It appears to be the practice of collectors to interpret the regulations to permit such entries when the evidence presented shows to the satisfaction of the collector that the merchandise is intended for exportation.

In view of this interpretation, in which the department concurs, it is not deemed necessary to amend the article in question.

You also recommend the amendment of articles 272, 273, and 693 so as to permit the withdrawal of merchandise before liquidation at the entered quantity when the merchandise is subject to a specific rate of duty.

In the opinion of the department a distinction should be made between withdrawals for immediate export and withdrawals for transportation and exportation.

It appears to be the present practice of collectors to permit withdrawals of merchandise subject to specific rates at the entered quantity.

This practice with respect to merchandise intended for immediate export is approved by the department; but with respect to merchandise withdrawn for transportation and exportation prior to liquidation the quantities should be ascertained before the merchandise is shipped from the port of original entry.

Respectfully, Wm. P. Malburn,
(92819-272.) *Assistant Secretary.*

Collector of Customs, *San Francisco, Cal.*



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(T. D. 36593.)

*Drawback on hats.*

**T. D. 35112 of February 4, 1915, extended to cover finished straw hats manufactured by C. Thalheim Co. (Inc.), of New York, N. Y., with the use of imported unfinished straw-hat bodies.**

TREASURY DEPARTMENT, *July 27, 1916.*

SIR: The department's regulations of February 4, 1915 (T. D. 35112), providing for the payment of drawback on hats manufactured by Blum & Lehman Co., of Philadelphia, with the use of Panama hats imported in the rough, are hereby extended to cover finished straw hats manufactured by the C. Thalheim Co. (Inc.), of New York, N. Y., with the use of imported unfinished straw-hat bodies.

The sworn statement of the manufacturers, dated June 29, 1916, is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on finished straw hats exported on and after June 17, 1916.

Respectfully, WM. P MALBURN,
(10877-1.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36594.)

*Customs cigar stamps.*

**Customs inspection stamps not to be affixed to cigars not in excess of 3,000 in passengers' baggage.—T. D. 36467 of June 7, 1916, corrected.**

TREASURY DEPARTMENT, *July 29, 1916.*

SIR: The department refers to your letter of the 21st ultimo, inviting attention to an error in T. D. 36467, amending article 361 of the Customs Regulations of 1915, in regard to customs inspection stamps on cigars.

The said decision in so far as it relates to cigars should read "As to cigars in excess of 50 and up to 3,000," instead of 1,000, as published in T. D. 36467, which decision is amended accordingly.

Respectfully, WM. P. MALBURN,
(93120.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36595.)

*Drawback on confectionery.*

**Drawback on confectionery manufactured by the Novelty Candy Co., of Jersey City, N. J., with the use of imported refined sugar or refined sugar produced in whole or in part from imported raw sugar.**

TREASURY DEPARTMENT, *July 31, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations

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(chapter 18 of the Customs Regulations of 1915) on confectionery manufactured by the Novelty Candy Co., of Jersey City, N. J., with the use of imported refined sugar or refined sugar produced in whole or in part from imported raw sugar.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated April 26, 1916, transmitted herewith, showing, in the case of each lot of confectionery manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the kind and quantity of confectionery produced, and the quantity and identity of refined sugar appearing therein. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The quantity of refined sugar which may be taken as a basis for the allowance of drawback shall not exceed the quantity appearing in the exported confectionery, as shown by the abstract from the manufacturing record.

Respectfully, WM. P. MALBURN,
(97808.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36596—G. A. 7947.)

*Scarfs—Lace wearing apparel.*

Cotton scarfs made on knitting machines or frames in fancy or ornamental openwork designs, and which are known and recognized in the trade and commerce of this country as "lace," are properly dutiable under the provision in paragraph 358, tariff act of 1913, for "wearing apparel, and all other articles or fabrics made wholly or in part of lace or of imitation lace of any kind."—G. A. 7775 (T. D. 35715) modified.

United States General Appraisers, New York, July 27, 1916.

In the matter of protests 773683, etc., of O. & G. Schoenherr against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

*Walden & Webster* (*Edward F. Jordan* of counsel) for the importers.

*Bert Hanson*, Assistant Attorney General (*Martin T. Baldwin* and *Thomas J. Doherty*, special attorneys), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; COOPER, G. A., not participating).

HOWELL, *General Appraiser:* The merchandise consists of knitted scarfs composed of cotton and metal thread, cotton being the component material of chief value. It was assessed for duty at the rate of 60 per cent ad valorem under the provision in paragraph 358, tariff act of 1913, for "wearing apparel * * * made wholly or in part of lace or of imitation lace of any kind," and is claimed to be dutiable at the rate of 30 per cent ad valorem as cotton knit wearing apparel under paragraph 261 of said act.

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The merchandise, as well as the issue, is identical with that passed upon in the case of the same importers, G. A. 7775 (T. D. 35715), and the record in that case has been incorporated with and made a part of the record in the case at bar. The importers offered no further proof, but the Government called five additional witnesses to prove that these scarfs are commercially known as "lace."

From an inspection of the samples in evidence, it appears that the articles are made in the form of a light openwork fabric in ornamental designs. The witnesses called by the Government were wholesale dealers in laces, and they all agreed that merchandise of this character is known in the wholesale trade and commerce of this country as "lace." It is true that not all of the witnesses have dealt in merchandise absolutely identical with these scarfs, but that does not render their testimony any the less persuasive since they are dealers in laces and are competent to testify as to the general commercial meaning and scope of the broad term "lace." United States *v.* Georgia Pulp and Paper Manufacturing Co. (3 Ct. Cust. Appls., 410; T. D. 32998).

In Schoenherr's case, *supra*, we said in part:

> The testimony in the case is very meager and fails to establish any commercial designation for these articles, although tending to show that they are not recognized in the wholesale trade in this country as lace or imitation lace.

We then pointed out that it had been the practice of the customs officials, for a period of over seven years, to classify scarfs of this character as cotton wearing apparel, and we held that in the absence of testimony to show that the articles were commercially known as lace or imitation lace the long-continued practice of classifying them as cotton wearing apparel should not be disturbed. Now, however, the Government has clearly proven by competent evidence a commercial designation, which we think must be given controlling effect.

We therefore conclude that the scarfs are dutiable as assessed. The decision of the collector is accordingly affirmed, and G. A. 7775 (T. D. 35715) is modified to conform herewith.

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## *Abstracts of decisions of the Board of General Appraisers.*

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*Board 1*—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

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BEFORE BOARD 2, JULY 25, 1916.

**No. 40034.**—Protests 796511, etc., of Chas. F. Welek Importing Co. (St. Louis).

BEADED ARTICLES—TRIMMINGS.—Goods invoiced as buttons, galloons, or flouncings and returned by the appraiser as trimmings or silk netting, classified at 60 per

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cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as articles in chief value of beads or spangles at 50 per cent under paragraph 333.

Opinion by HOWELL, G. A. No proof as the component of chief value having been offered, protests overruled.

**No. 40035.**—Protest 801327 of S. J. Stern Co. (New York).

BEADED TRIMMINGS.—The question here is whether spangled or beaded trimmings or articles of wearing apparel were properly classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, or are dutiable at 50 per cent under paragraph 333, as claimed by the importers.

Opinion by HOWELL, G. A. It was found that the goods consist of trimmings and articles of wearing apparel composed of a silk net foundation and in chief value of beads or spangles. They were held dutiable under paragraph 333. Loewenthal *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464) followed.

**No. 40036.**—Protests 766237, etc., of Stern & Stern et al. (New York).

SILK MOURNING CRAPES.—Silk mourning crapes classified as silk veilings or trimmings at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as woven silk fabrics at 45 per cent under paragraph 318.

Opinion by HOWELL, G. A. Goods found to be of the same dutiable character as those passed upon in Auffmordt *v.* United States (7 Ct. Cust. Appls, —; T. D. 36320) were held dutiable under paragrapn 318.

**No. 40037.**—Protests 784313, etc., of Franklin Simon & Co. (New York).

SUFFICIENCY OF PROTEST.—It is claimed that these protests do not set forth distinctly and specifically the reasons for the objections to the collector's action.

Opinion by HOWELL, G. A. It was found that, while the protests are loosely drawn and their form not to be commended, they are sufficiently specific. Dieckerhoff *v.* United States (4 Ct. Cust. Appls., 230; T. D. 33340) and United States *v.* Malhami (7 Ct. Cust. Appls., —; T. D. 36493) cited.

Protests unsupported; overruled.

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BEFORE BOARD 2, JULY 27, 1916.

**No. 40038.**—Protest 803033 of F. W. Woolworth Co. (Baltimore).

BOXES OF WOOD COVERED WITH SURFACE-COATED PAPER.—Merchandise classified as boxes of wood covered with surface-coated paper at 35 per cent ad valorem under paragraph 324, tariff act of 1913, is claimed to be dutiable as manufactures of wood at 15 per cent under paragraph 176.

Opinion by FISCHER, G. A. * * * The facts are apparently undisputed, nor has any testimony been introduced herein, the case being submitted for decision on the report of the Government analyst as to the component materials in the sample box offered in evidence. This report shows wood to constitute the most valuable material in the box. However, no evidentiary value can be attached to said report in view of the fact that these particular boxes are provided for *eo nomine* in paragraph 324, which provision of course takes precedence over the general provision for manufactures in chief value of wood contained in paragraph 176. In fact, it would indeed be difficult to find a more accurate description of these boxes than that found in paragraph 324. It specifies boxes of wood covered with surface-coated paper, which is precisely the kind of boxes we have before us. The protest is therefore overruled and the decision of the collector affirmed.

**No. 40039.**—Protest 773081 of D. F. Young, jr. (New York).

TISSUE COPYING PAPER.—Tissue paper used in letter copying, classified under the provision for tissue paper in paragraph 323, tariff act of 1913, at 30 per cent ad valorem, is claimed dutiable as paper not specially provided for at 25 per cent under paragraph 332.

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Opinion by FISCHER, G. A. On the authority of Abstract 37732 the copying paper in question was held properly classified under paragraph 323.

**No. 40040.**—Protest 795050 of P. P. Muller (Buffalo).

MACHINE TOOLS.—A machine used for cutting threads on metal articles, classified at 20 per cent ad valorem under paragraph 167, tariff act of 1913, is claimed dutiable as a machine tool under paragraph 165.

Opinion by FISCHER, G. A. It was found that the machine in question is about 5 feet high with a clamp at one end worked by means of a belt and pulley, and at the other end a cutting machine about 2 inches in diameter for boring the thread. The article to be threaded is inserted at one end and is wound around the cutting knife. This was held to be a machine tool, dutiable under paragraph 165.

**No. 40041.**—Protest 795482 of G. W. Sheldon & Co. (Philadelphia).

BOTTLE CAPS.—Metal bottle caps embossed on the top with a decorative design, classified at 40 per cent ad valorem under paragraph 164, tariff act of 1913, are claimed dutiable as bottle caps not decorated at only 30 per cent.

Opinion by FISCHER, G. A. Protest unsupported; overruled.

**No. 40042.**—Protest 802350 of Edgar T. Ward's Sons (Boston).

STEEL STRIPS.—Certain steel strips over five inches in width are claimed dutiable at 12 per cent ad valorem under paragraph 105, tariff act of 1913.

Opinion by FISCHER, G. A. Upon stipulation certain steel in strips was held dutiable at 12 per cent under paragraph 105. G. A. 7861 (T. D. 36176) followed.

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## (T. D. 36597.)

### *Drawback on mica articles.*

Drawback on mica articles manufactured by the Eugene Munsell Co., of New York, N. Y., with the use of imported uncut mica.—T. D. 28115 of April 25, 1907, revoked.

TREASURY DEPARTMENT, *July 31, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on cut and stamped mica and on mica chimneys manufactured by Eugene Munsell & Co., of New York, N. Y., with the use of imported uncut mica.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated June 16, 1916, transmitted herewith, showing, in the case of each lot of mica articles manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the character, dimensions, and net weight of the articles produced, the quantity and identity of the imported mica used in the manufacture thereof, the quantity of mica appearing therein, and the quantity and value of each grade of waste resulting. An abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported uncut mica used in the manufacture of the exported mica articles, less the

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quantity of imported uncut mica which the value of the waste will replace.

T. D. 28115 of April 25, 1907, is hereby revoked.

Respectfully, WM. P. MALBURN,
(23177.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36598.)

*Drawback on hats.*

T. D. 35112 of February 4, 1915, extended to cover bleached and finished hats manufactured by the R. H. Comey Co. and S. Glanzrock & Son from imported crude or unfinished South American and Japanese hat shapes.

TREASURY DEPARTMENT, *August 1, 1916.*

SIR: The department's regulations of February 4, 1915 (T. D. 35112), providing for drawback on finished hats manufactured by the Blum & Lehman Co., of Philadelphia, Pa., are hereby extended, so far as applicable, to cover imported crude or unfinished South American or Japanese hat shapes exported after having been bleached by the R. H. Comey Co., of Camden, N. J., Brooklyn, N. Y., and Chicago, Ill., and blocked or blocked and trimmed by S. Glanzrock & Son, of New York, N. Y.

The sworn statement of S. Glanzrock & Son, dated June 14, 1916, is transmitted herewith. The sworn statement of the R. H. Comey Co. is on file in your office in connection with T. D. 35830 of October 26, 1915.

Drawback may be allowed under these regulations on the articles covered thereby exported on or after June 17, 1916.

Respectfully, WM. P. MALBURN,
(64590-1.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36599.)

*Drawback on typewriter ribbons, etc.*

Drawback on typewriter ribbons and slit and edged typewriter cloth, inked or uninked, manufactured by the Frank Bayer Co., of New York, N. Y., with the use of imported cotton cloth.—T. D. 32210 of January 29, 1912, revoked.

TREASURY DEPARTMENT, *August 1, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on slit and edged typewriter-ribbon cloth, inked or uninked, and on typewriter ribbons

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manufactured by the Frank Bayer Co., of New York, N. Y., with the use of either imported bleached cotton cloth or cotton cloth imported in the gray and bleached in accordance with the provisions of T. D. 35965 of December 10, 1915.

A manufacturing record shall be kept by the Frank Bayer Co. in the manner described in its sworn schedule, dated July 13, 1916, and an abstract from such record shall be filed with the drawback entry showing the manufacturing lot number of the exported articles, the character thereof, the length and width of the same, the quantity and quality of imported cotton cloth appearing therein, and the length, width, quality, and identity of the imported cotton cloth used in the manufacture thereof.

The quantity of imported cotton cloth which may be taken as a basis for the allowance of drawback may equal the quantity appearing in the exported articles, as shown by the abstract from the manufacturing record prescribed above, plus an addition to compensate for loss in bleaching, as shown by the abstract from the bleacher's record, provided for in T. D. 35965.

The sworn statement of the Frank Bayer Co., dated July 13, 1916, is transmitted herewith for filing in your office.

T. D. 32210 of January 29, 1912, is hereby revoked.

Respectfully, WM. P. MALBURN,
(54725.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36600.)

*Drawback on medicinal preparations.*

Drawback on a medicinal preparation designated as Wildroot Hair Tonic, manufactured by the Wildroot Chemical Co., of Buffalo, N. Y., with the use of domestic tax-paid alcohol or with the use of such alcohol in combination with imported essential oils and drugs.

TREASURY DEPARTMENT, *August 1, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on a medicinal preparation designated as Wildroot Hair Tonic manufactured by the Wildroot Chemical Co., of Buffalo, N. Y., with the use of domestic tax-paid alcohol or with the use of such alcohol in combination with imported essential oils and drugs.

A manufacturing record shall be kept, showing, in the case of each lot of Wildroot Hair Tonic manufactured for exportation with benefit of drawback, the manufacturing lot number and date of manufacture thereof, the quantity and identity of domestic tax-paid alcohol and

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of each kind of imported material used, the net quantity of hair tonic produced and bottled, and the net quantity of hair tonic expressed from the spent drugs and returned to process. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantities of domestic tax-paid alcohol and imported materials used in the manufacture of the exported hair tonic, as shown by the abstract from the manufacturing record.

The sworn schedule of the manufacturers, dated July 22, 1916, is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on Wildroot Hair Tonic exported on or after June 19, 1916.

Respectfully, WM. P. MALBURN,
(105084.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36601.)

*Drawback on pills and tablets.*

Drawback on pills and tablets manufactured by Frederick C. Arner, of Buffalo, N. Y., with the use of refined sugar produced in whole or in part from imported raw sugar.—T. D. 29586 of March 1, 1909, and T. D. 30590 of May 5, 1910, revoked.

TREASURY DEPARTMENT, *August 1, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on pills and tablets manufactured by Frederick C. Arner, of Buffalo, N. Y., with the use of refined sugar produced in whole or in part from imported raw sugar.

The quantity of refined sugar which may be taken as a basis for the allowance of drawback shall not exceed the quantity appearing in the exported pills and tablets, as shown by the sworn statement of the manufacturer, dated July 11, 1916, which is transmitted herewith for filing in your office.

Supplemental sworn schedules showing changes in the formulas or in the method of packing pills and tablets for export may be filed, and upon verification of such supplemental schedules drawback may be allowed on pills and tablets manufactured and packed in the manner described therein.

T. D. 29586 of March 1, 1909, and T. D. 30590 of May 5, 1910, are hereby revoked.

Respectfully, WM. P. MALBURN,
(62180.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36602.)

*Drawback on ingots and castings.*

Drawback on ingots and castings manufactured by the Walker M. Levett Co., of New York, N. Y., with the use of imported metallic magnesium, domestic aluminum, and other metals.

TREASURY DEPARTMENT, *August 2, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on aluminum alloy ingots and castings manufactured by the Walker M. Levett Co., of New York, N. Y., with the use in part of imported metallic magnesium and domestic aluminum and other metals.

A manufacturing record shall be kept, showing, in the case of each lot of castings or ingots manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the size of ingots or kind of castings produced, the number and net weight thereof, and the quantity of imported metallic magnesium appearing therein. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported metallic magnesium appearing in the exported articles, as shown by the abstract from the manufacturing record.

Drawback may be allowed under these regulations on ingots and castings exported on and after March 1, 1916.

Respectfully, WM. P. MALBURN,
(104680.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36603.)

*Customs districts.*

Changing the boundary of customs collection districts Nos. 29 and 30 to place the waters of the Columbia River and north bank thereof west of 119° west longitude in district No. 29.

TREASURY DEPARTMENT, *July 31, 1916.*

*To collectors of customs and others concerned:*

The appended Executive order, dated February 7, 1916, changing the boundary of customs collection district No. 29 (Oregon) and district No. 30 (Washington) so as to detach that part of the State of Washington which embraces the waters of the Columbia River and north bank thereof west of 119° west longitude from district

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No. 30 and to place the same in district No. 29, is published for the information and guidance of all concerned.

(90740–29.) WM. P. MALBURN, *Assistant Secretary.*

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EXECUTIVE ORDER.

Under the provisions of the act approved August 1, 1914, making appropriations for the sundry civil expenses of the Government for the fiscal year ended June 30, 1915, the boundaries of customs collection districts No. 29 (district of Oregon) and No. 30 (district of Washington), created by order of the President dated March 3, 1913, are hereby changed so as to detach that part of the State of Washington which embraces the waters of the Columbia River and the north bank of the said river, west of the one hundred and nineteenth degree of west longitude from customs collection district No. 30 (district of Washington), and place the same within the limits of customs collection district No. 29 (district of Oregon).

WOODROW WILSON.

THE WHITE HOUSE, *February 7, 1916.*

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## (T. D. 36604.)

### *Drawback on air brakes.*

Drawback on air brakes and air-brake parts manufactured by the Westinghouse Air Brake Co., of Pittsburgh, Pa., with the use of imported parts.

TREASURY DEPARTMENT, *August 2, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on air brakes and air-brake parts manufactured by the Westinghouse Air Brake Co., of Pittsburgh, Pa., with the use of imported parts, in the manner described in the sworn statement of the manufacturers, dated June 30, 1916, which is transmitted herewith for filing in your office.

A manufacturing record shall be kept in the manner described in the sworn statement of the Westinghouse Air Brake Co., above referred to, showing, in the case of each lot of air brakes and air-brake parts manufactured for exportation with benefit of drawback, the date of manufacture, the kind and number of articles manufactured, the number, value, and identity of imported parts of each kind used in the manufacture thereof, and the quantity and value of the waste resulting. A sworn abstract from such manufacturing record shall be filed with the drawback entry, and in the case of air-brake parts the abstract shall contain a brief description of the process of manufacture.

The allowance shall not exceed the quantity of imported material used in the manufacture of the exported air brakes and air-brake parts, as shown by the abstract from the manufacturing record, the allowance for waste to be reduced according to the quantity of imported material which the value thereof will replace.

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Drawback may be allowed under these regulations on the articles covered thereby exported on and after February 2, 1916.

Respectfully, WM. P. MALBURN,
(45744.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36605.)

*Drawback on cigarettes.*

Drawback on cigarettes manufactured by the R. J. Reynolds Tobacco Co., of Winston-Salem, N. C., with the use of imported cigarette paper and Turkish leaf tobacco.

TREASURY DEPARTMENT, *August 2, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on cigarettes designated as "Camel" and "Red Kamel," manufactured by the R. J. Reynolds Tobacco Co. of Winston-Salem, N. C., with the use of imported cigarette paper and Turkish leaf tobacco in combination with domestic tobacco and flavoring materials

The allowance shall not exceed the quantities of imported Turkish tobacco and cigarette paper appearing in the exported cigarettes, as shown by the sworn statements of the manufacturers, dated June 19 and July 5, 1916, which are transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on cigarettes exported on and after April 27, 1916.

Respectfully, WM. P. MALBURN,
(104984.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Wilmington, N. C.*

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(T. D. 36606.)

*Drawback on maple sirup, jams, and jellies.*

Drawback on maple sirup, jams and jellies manufactured by Francis H. Leggett & Co., of New York, N. Y., with the use of imported maple sugar and refined sugar produced in whole or in part from imported raw sugar.—T. D. 30060 of October 23, 1909, T. D. 30284 of January 20, 1910, and T. D. 30486 of April 4, 1910, revoked.

TREASURY DEPARTMENT, *August 2, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on jams and jellies manufactured by Francis H. Leggett & Co., of New York, N. Y., with the use of refined sugar produced in whole or in part from imported

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raw sugar, and on maple sirups manufactured by the said company with the use of such refined sugar in combination with imported maple sugar.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated June 12, 1916, showing, in the case of each lot of jams and jellies and maple sirups manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity and kind of article manufactured, and the quantity and identity of each kind of sugar appearing therein. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The quantities of refined sugar and maple sugar which may be taken as a basis for the allowance of drawback shall not exceed the quantities appearing in the exported jams and jellies or maple sirups as shown by the abstract from the manufacturing record.

The sworn statement of the manufacturers, above referred to, is transmitted herewith for filing in your office.

T. D. 30060 of October 23, 1909, T. D. 30284 of January 20, 1910, and T. D. 30486 of April 4, 1910, are hereby revoked.

Respectfully, WM. P. MALBURN,
(48216.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36607.)

*Drawback on hats.*

T. D. 35112 of February 4, 1915, extended to provide for drawback on hats bleached by the R. H. Comey Co. and blocked and trimmed by the Colon Hat Corporation, of New York, N. Y.

TREASURY DEPARTMENT, *August 1, 1916.*

SIR: The department's regulations of February 4, 1915 (T. D. 35112), providing for drawback on hats manufactured by the Blum & Lehman Co., of Philadelphia, Pa., are hereby extended, so far as applicable, to cover imported unfinished straw hat bodies exported after having been bleached by the R. H. Comey Co., of Camden, N. J., Brooklyn, N. Y., and Chicago, Ill., and blocked and trimmed by the Colon Hat Corporation, of New York, N. Y.

The sworn statement of the Colon Hat Corporation, dated June 21, 1916, is transmitted herewith. The sworn statement of the R. H. Comey Co. is now on file in your office in connection with T. D. 35830.

Drawback may be allowed under these regulations on the articles covered thereby exported on or after March 15, 1916.

Respectfully, WM. P. MALBURN,
(100877-12.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36608.)

*List of customs districts.*

TREASURY DEPARTMENT, *August 4, 1916.*

*To collectors and other officers of the customs:*

The appended list of customs districts, headquarters ports, ports of entry, ports at which merchandise may be entered for immediate transportation without appraisement, ports of delivery under the immediate transportation act, ports at which bonded warehouses are established, and ports where the customhouse premises are used for the storage of imported merchandise in bond, corrected to August 1, 1916, is published for the information and guidance of all concerned.

BYRON R. NEWTON, *Assistant Secretary.*

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*List of customs districts, headquarters, and ports of entry.*

[The port first named in the following list is the headquarters for the district.]

| District. | Ports of entry. |
|---|---|
| Alaska | Juneau. |
| | Cordova. |
| | Eagle. |
| | Fairbanks. |
| | Fortymile. |
| | Ketchikan. |
| | Nome. |
| | Skagway. |
| | St. Michael. |
| | Sulzer. |
| | Unalaska. |
| | Wrangell. |
| Arizona | Nogales. |
| | Douglas. |
| | Naco. |
| | Yuma. |
| Buffalo | Buffalo. |
| | Dunkirk. |
| | Lewiston. |
| | Niagara Falls. |
| | North Tonawanda (including Tonawanda). |
| Chicago | Chicago. |
| | Michigan City. |
| | Peoria. |
| Colorado | Denver. |
| Connecticut | Bridgeport. |
| | Greenwich. |
| | Hartford. |
| | Middletown. |
| | New Haven. |
| | New London. |
| | Norwalk. |
| | South Manchester. |
| | Stamford. |
| | Stonington. |
| Dakota | Pembina. |
| | Ambrose. |
| | Antler. |
| | Crosby. |
| | Hannah. |
| | Hansboro. |
| | Neche. |
| | Noyes. |
| | Portal. |
| | Sarles. |
| | Sherwood. |
| | Souris. |
| | St. John. |
| | St. Vincent. |
| | Walhalla. |
| Duluth and Superior | Duluth and Superior, Wis. (including West Superior). |
| | Ashland. |
| | International Falls. |
| | Isle Royal. |
| | Ranier. |
| | Two Harbors. |
| | Warroad. |
| Eagle Pass | Eagle Pass. |
| | Boquillas. |
| | Del Rio. |
| | Presidio. |
| El Paso | El Paso. |
| | Columbus, N. Mex. |
| Florida | Tampa (including Port Tampa). |
| | Apalachicola. |
| | Boca Grande. |
| | Carrabelle. |
| | Cedar Keys. |
| | Fernandina (including St. Marys, Ga.). |
| | Jacksonville. |
| | Key West. |
| | Miami. |
| | Pensacola. |
| | Punta Gorda. |
| | Port Inglis. |
| | St. Augustine. |
| | St. Andrews. |
| Galveston | Galveston (including Port Bolivar and Texas City). |
| | Dallas. |
| | Houston. |
| | Port Lavaca. |
| | San Antonio. |
| Georgia | Savannah. |
| | Atlanta. |
| | Brunswick. |
| | Darien. |
| Hawaii | Honolulu. |
| | Hilo. |
| | Kahului. |
| | Kaloa. |
| | Mahukona. |
| Indiana | Indianapolis. |
| | Evansville. |
| Iowa | Des Moines. |
| | Dubuque. |
| | Sioux City. |

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*List of customs districts, headquarters, and ports of entry*—Continued.

| District. | Ports of entry. |
|---|---|
| Kentucky | Louisville. |
| | Paducah. |
| Laredo | Laredo. |
| | Brownsville. |
| | Corpus Christi. |
| | Rio Grande City. |
| | Roma. |
| | Santa Maria. |
| Maine and New Hampshire. | Portland, Me. |
| | Bangor. |
| | Bath. |
| | Belfast. |
| | Boothbay. |
| | Bridgewater. |
| | Calais. |
| | Castine. |
| | Eastport. |
| | Ellsworth. |
| | Fort Fairfield. |
| | Fort Kent. |
| | Houlton. |
| | Limestone. |
| | Lowelltown (or Holeb). |
| | Lubec. |
| | Machias. |
| | Madawaska. |
| | Mars Hill. |
| | Monticello. |
| | Portsmouth (including Kittery, Me.). |
| | Rockland. |
| | Rockport. |
| | South West Harbor. |
| | Vanceboro. |
| | Van Buren. |
| | Vinal Haven. |
| Maryland | Baltimore. |
| | Alexandria, Va. |
| | Annapolis. |
| | Crisfield. |
| | Washington, D. C. |
| Massachusetts | Boston. |
| | Barnstable. |
| | Fall River. |
| | Gloucester. |
| | Holyoke. |
| | New Bedford. |
| | Plymouth. |
| | Provincetown. |
| | Salem (including Beverly, Marblehead, and Lynn). |
| | Springfield. |
| | Vineyard Haven. |
| | Worcester. |
| Michigan | Detroit. |
| | Alpena. |
| | Bay City. |
| | Charlevoix. |
| | Cheboygan. |
| | Detour. |
| | Escanaba. |
| | Gladstone. |
| | Grand Haven. |
| | Grand Rapids. |
| | Houghton. |
| | Ludington. |
| | Mackinaw. |
| | Manistee. |
| | Manistique. |
| | Marine City. |
| | Marquette. |
| | Muskegon. |
| | Petoskey. |
| | Port Huron. |
| | Saginaw. |
| | Sault Ste. Marie. |
| | St. Clair. |
| | St. Joseph. |
| Minnesota | St. Paul and Minneapolis. |
| Mobile | Mobile. |
| | Birmingham. |
| | Gulfport. |
| | Pascagoula. |
| Montana and Idaho | Great Falls. |
| | Eastport. |
| | Gateway. |
| | Plentywood. |
| | Port Hill. |
| | Sweetgrass. |
| New Orleans | New Orleans. |
| | Morgan City. |
| New York | New York. |
| | Albany. |
| | Greenport. |
| | Newark, N. J. |
| | Patchogue. |
| | Perth Amboy, N. J. |
| North Carolina | Wilmington. |
| | Beaufort. |
| | Elizabeth City. |
| | Manteo. |
| | Newbern. |
| | Winston-Salem. |
| Ohio | Cleveland. |
| | Ashtabula. |
| | Cincinnati. |
| | Columbus. |
| | Conneaut. |
| | Corry, Pa. |
| | Dayton. |
| | Erie, Pa. |
| | Fairport. |
| | Loraln. |
| | Put-in-Bay. |
| | Sandusky. |
| | Toledo. |
| Omaha | Omaha. |
| | Lincoln. |
| Oregon | Portland, Oreg. |
| | Astoria. |
| | Empire (Marshfield). |
| | Newport. |
| Philadelphia | Philadelphia (including Camden and Gloucester City, N. J.). |
| | Chester. |
| | Lewes. |
| | Thompsons Point. |
| | Tuckerton. |
| | Wilmington. |
| Pittsburgh | Pittsburgh. |
| | Wheeling. |
| Porto Rico | San Juan. |
| | Aguadilla. |
| | Arecibo. |
| | Arroyo. |
| | Fajardo. |
| | Guanica. |
| | Humacao. |
| | Mayaguez. |
| | Ponce. |
| Rhode Island | Providence. |
| | Newport. |
| Rochester | Rochester. |
| | Fair Haven. |
| | Oswego. |
| | Sodus Point. |
| | Syracuse. |
| | Utica. |
| Sabine | Port Arthur. |
| | Sabine. |
| San Francisco | San Francisco (including Oakland). |
| | Eureka. |
| | Port San Luis. |
| Southern California | Los Angeles. |
| | Calexico. |
| | Campo. |
| | San Diego. |
| | Tia Juana. |
| South Carolina | Charleston. |
| | Beaufort. |
| | Georgetown. |
| St. Lawrence | Ogdensburg. |
| | Alexandria Bay. |
| | Cape Vincent. |

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*List of customs districts, headquarters, and ports of entry*—Continued.

| District. | Ports of entry. | District. | Ports of entry. |
|---|---|---|---|
| St. Lawrence—(Con.). | Champlain. | Virginia—(Con.) | Chincoteague. |
| | Chateaugay. | | Petersburg. |
| | Chaumont. | | Reedville. |
| | Clayton. | | Richmond. |
| | Fort Covington. | Washington | Seattle. |
| | Malone. | | Aberdeen. |
| | Mooers. | | Anacortes. |
| | Morristown. | | Bellingham. |
| | Nyando. | | Blaine. |
| | Plattsburg. | | Chopaka. |
| | Rouses Point. | | Danville. |
| | Waddington. | | Everett. |
| St. Louis | St. Louis (including East St. Louis). | | Ferry. |
| | Cairo. | | Friday Harbor. |
| | Kansas City, Mo. | | Laurier. |
| | St. Joseph, Mo. | | Molson. |
| Tennessee | Memphis. | | Northport. |
| | Chattanooga. | | Port Angeles. |
| | Knoxville. | | Port Townsend. |
| | Nashville. | | Roche Harbor. |
| Utah and Nevada | Salt Lake City, Utah. | | South Bend. |
| Vermont | St. Albans. | | Spokane. |
| | Beecher Falls. | | Sumas. |
| | Burlington. | | Tacoma. |
| | Alburg. | Wisconsin | Milwaukee. |
| | Derby Line. | | Green Bay. |
| | Highgate. | | Kenosha. |
| | Island Pond. | | Kewaunee. |
| | North Troy. | | Manitowoc. |
| | Richford. | | Marinette (including Menominee). |
| | Swanton. | | Racine. |
| Virginia | Norfolk and Newport News. | | Sheboygan. |
| | Cape Charles City. | | Sturgeon Bay. |

*Ports at which merchandise may be entered for transportation to other ports without appraisement under the act of June 10, 1880.*

Alburg, Vt.
Ashtabula, Ohio.
Astoria, Oreg.
Baltimore, Md.
Bangor, Me.
Bath, Me.
Bay City, Mich.
Beecher Falls, Vt.
Blaine, Wash.
Boston, Mass.
Brownsville, Tex.
Brunswick, Ga.
Buffalo, N. Y.
Burlington, Vt.
Calais, Me.
Charleston, S. C.
Chicago, Ill.
Chopaka, Wash.
Cleveland, Ohio.
Detroit, Mich.
Duluth, Minn.
Eagle Pass, Tex.
Eastport, Idaho.
Eastport, Me.
El Paso, Tex.
Everett, Wash.
Fernandina, Fla.
Fort Covington, N. Y.
Galveston, Tex.
Gladstone, Mich.
Honolulu, Hawaii.
Island Pond, Vt.
Jacksonville, Fla.
Key West, Fla.
Knights Key, Fla.
Laredo, Tex.
Laurier, Wash.
Los Angeles, Cal.
Lowelltown (or Holeb), Me.
Malone, N. Y.
Marquette, Mich.
Miami, Fla.
Milwaukee, Wis.
Mobile, Ala.
Neche, N. Dak.
New London, Conn.
New Orleans, La.
Newport, Vt.
Newport News, Va.
New York, N. Y.
Niagara Falls, N. Y.
Nogales, Ariz.
Norfolk, Va.
Northport, Wash.
Nyando, N. Y.
Ogdensburg, N. Y.
Pembina, N. Dak.
Pensacola, Fla.
Philadelphia, Pa.
Port Huron, Mich.
Portal, N. Dak.
Port Arthur, Tex.
Portland, Me.
Portland, Oreg.
Port Townsend, Wash.
Providence, R. I.
Ranier, Minn.
Richford, Vt.
Rochester, N. Y.
Rouses Point, N. Y.
St. Albans, Vt.
St. John, N. Dak.
St. Vincent (Noyes), Minn.
San Diego, Cal.
San Francisco, Cal.
Sault Ste. Marie, Mich.
Savannah, Ga.
Seattle, Wash.
Sioux City, Iowa.
Sumas, Wash.
Tacoma, Wash.
Tampa, Fla.
Texas City, Tex.
Toledo, Ohio.
Van Buren, Me.
Vanceboro, Me.
Walhalla, N. Dak.
Wilmington, N. C.

*Ports to which merchandise may be transported without appraisement under the act of June 10, 1880.*

Albany, N. Y.
Astoria, Oreg.
Atlanta, Ga.
Baltimore, Md.
Bangor, Me.
Bath, Me.
Bay City, Mich.
Bellingham, Wash.
Birmingham, Ala.
Boston, Mass.
Bridgeport, Conn.
Brunswick, Ga.
Buffalo, N. Y.
Burlington, Vt.
Calais, Me.
Charleston, S. C.
Chattanooga, Tenn.
Chicago, Ill.
Cincinnati, Ohio.
Cleveland, Ohio.
Columbus, Ohio.

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Corry, Pa.[1]
Council Bluffs, Iowa.[2]
Dallas, Tex.
Dayton, Ohio.
Denver, Colo.
Des Moines, Iowa.
Detroit, Mich.
Dubuque, Iowa.
Duluth, Minn.
Dunkirk, N. Y.
Durham, N. C.[3]
Eagle Pass, Tex.
Eastport, Me.
El Paso, Tex.
Erie, Pa.
Evansville, Ind.
Everett, Wash.
Fall River, Mass.
Fernandina, Fla.
Galveston, Tex.
Gladstone, Mich.
Gloucester, Mass.
Grand Haven, Mich.
Grand Rapids, Mich.
Greenbay, Wis.
Greenwich, Conn.
Hartford, Conn.
Honolulu, Hawaii.
Houston, Tex.
Indianapolis, Ind.
Jacksonville, Fla.
Kansas City, Mo.
Key West, Fla.
Knoxville, Tenn.
Laredo, Tex.
Lincoln, Nebr.
Los Angeles, Cal.
Louisville, Ky.
Marquette, Mich.
Memphis, Tenn.
Middletown, Conn.[4]
Milwaukee, Wis.
Minneapolis, Minn.
Mobile, Ala.
Nashville, Tenn.
Newark, N. J.
New Bedford, Mass.
New Haven, Conn.
New Orleans, La.
Newport, R. I.
Newport News, Va.
New York, N. Y.
Niagara Falls, N. Y.
Nogales, Ariz.
Norfolk, Va.
Norwalk, Conn.[3]
Ogdensburg, N. Y.
Omaha, Nebr.
Oswego, N. Y.
Peoria, Ill.
Perth Amboy, N. J.
Petersburg, Va.
Philadelphia, Pa
Pittsburgh, Pa.
Port Arthur, Tex.
Port Huron, Mich.
Portland, Me.
Portland, Oreg.
Portsmouth, N. H.
Port Townsend, Wash.
Providence, R. I.
Richmond, Va.
Rochester, N. Y.
St. Augustine, Fla.
St. Joseph, Mo.
St. Louis, Mo.
St. Paul, Minn.
Sabine Pass, Tex.
Saginaw, Mich.
Salt Lake City, Utah.
San Antonio, Tex.
San Diego, Cal.
Sandusky, Ohio.
San Francisco, Cal.
Sault Ste. Marie, Mich.
Savannah, Ga.
Seattle, Wash.
Sioux City, Iowa.
South Manchester, Conn.[4]
Spokane, Wash.
Springfield, Mass.
Stamford, Conn.[3]
Superior, Wis.
Syracuse, N. Y.
Tacoma, Wash.
Tampa, Fla.
Toledo, Ohio.
Utica, N. Y.
Van Buren, Me.
Vanceboro, Me.
Washington, D. C.
Wilmington, Del.
Wilmington, N. C.
Winston-Salem, N. C.
Worcester, Mass.

*List of ports at which bonded warehouses are established.*

Albany, N. Y.
Baltimore, Md.
Bangor, Me.
Belfast, Me.
Boston, Mass.
Bridgeport, Conn.
Brownsville, Tex.
Buffalo, N. Y.
Burlington, Vt.
Cape Vincent, N. Y.
Chattanooga, Tenn.
Chicago, Ill.
Cincinnati, Ohio.
Cleveland, Ohio.
Columbus, Ohio.
Dallas, Tex.
Dayton, Ohio.
Denver, Colo.
Detroit, Mich.
Douglas, Ariz.
Duluth, Minn.
Eagle Pass, Tex.
El Paso, Tex.
Galveston, Tex.
Gladstone, Mich.
Grand Rapids, Mich.
Hartford, Conn.
Honolulu, Hawaii.
Houston, Tex.
Kansas City, Mo.
Key West, Fla.
Laredo, Tex.
Los Angeles, Cal.
Louisville, Ky.
Manitowoc, Wis.
Minneapolis, Minn.
Milwaukee, Wis.
Naco, Ariz.
New Haven, Conn.
New Orleans, La.
Newport News, Va.
New York, N. Y.
Niagara Falls, N. Y.
Nogales, Ariz.
Omaha, Nebr.
Oswego, N. Y.
Pensacola, Fla.
Philadelphia, Pa.
Pittsburgh, Pa.
Port Huron, Mich.
Portal, N. Dak.
Portland, Me.
Portland, Oreg.
Port Townsend, Wash.
Providence, R. I.
Richmond, Va.
Rochester, N. Y.
St. Joseph, Mo.
St. Louis, Mo.
St. Michael, Alaska.
St. Paul, Minn.
Salem, Mass.
Salt Lake City, Utah.
San Antonio, Tex.
San Diego, Cal.
San Francisco, Cal.
San Juan, P. R.
Savannah, Ga.
Seattle, Wash.
Spokane, Wash.
Superior, Wis.
Tacoma, Wash.
Tampa, Fla.
Toledo, Ohio.
Utica, N. Y.
Wilmington, Del.
Wilmington, N. C.
Winston-Salem, N. C.

*List of ports where no bonded warehouse of Class 3 is established, but where the custom-house premises are used for storage of bonded merchandise.*

Agusdilla, P. R.
Arecibo, P. R.
Arroyo, P. R.
Birmingham, Ala.
Charleston, S. C.
Cleveland, Ohio.
Des Moines, Iowa.
Fajardo, P. R.
Guanica, P. R.
Humacao, P. R.
Jacksonville, Fla.
Knoxville, Tenn.
Marquette, Mich.
Mayaguez, P. R.
Nashville, Tenn.
Norfolk, Va.
Peoria, Ill.
Ponce, P. R.
Rochester, N. Y.
St. Augustine, Fla.
Sandusky, Ohio.
Washington, D. C. (Georgetown).
Worcester, Mass.

[1] Merchandise should be consigned on I. T. entry and manifests delivered to deputy collector of customs at Erie, who will permit delivery under Article IX of reorganization.
[2] Merchandise should be consigned on I. T. entry and manifests delivered to collector of customs at Omaha, Nebr., who will permit delivery under Article IX of reorganization.
[3] Merchandise should be consigned on I. T. entry and manifests delivered to collector of customs at headquarters port, who will permit delivery under Article IX of reorganization.
[4] Merchandise should be consigned on I. T. entry and manifests delivered to deputy collector of customs at Hartford, who will permit delivery under Article IX of reorganization.



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(T. D. 36609—G. A. 7948.)

*Silk veilings.*

Woven silk fabrics measuring about 36 inches in width, having a selvage on either edge and two stripes running lengthwise throughout the center of the cloth with merely sufficient space between the stripes to permit the fabric to be cut into two separate pieces measuring 18 inches in width, the stripes forming selvages for the separate pieces of cloth when so cut, the fabrics as imported being known commercially as "veilings" and chiefly used in the making of veils, are properly dutiable at 60 per cent ad valorem as veilings under paragraph 358, tariff act of 1913, rather than as woven silk fabrics in the piece.—Heyliger's case, Abstract 38271; Auffmordt *v.* United States (7 Ct. Cust. Appls., —; T. D. 36320), and United States *v.* Buss (5 Ct. Cust. Appls., 110; T. D. 34138) cited.

United States General Appraisers, New York, July 31, 1916.

In the matter of protests 761195, etc., of Theo. Tiedemann & Sons against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

*Gerry & Wakefield* (*Edwin R. Wakefield* of counsel) for the importers.

*Bert Hanson*, Assistant Attorney General (*Martin T. Baldwin*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; COOPER, G.A., not participating).

HOWELL, *General Appraiser:* The merchandise consists of a thin black silk fabric in the piece. It was classified by the collector as "silk veiling" dutiable at the rate of 60 per cent ad valorem under the *eo nomine* provision for "veils, veilings, * * * of whatever yarns, threads, or filaments composed," in paragraph 358, tariff act of 1913. The importers claim that the merchandise is properly dutiable at the rate of 45 per cent ad valorem under paragraph 318 of said act, which reads as follows:

318. Woven fabrics, in the piece or otherwise, of which silk is the component material of chief value, and all manufactures of silk, or of which silk or silk and india rubber are the component materials of chief value, not specially provided for in this section, 45 per centum ad valorem.

The merchandise is a loom-woven fabric about 36 inches wide. It is woven with a selvage on either edge a little over one-fourth of an inch in width, and in the center of the cloth, running lengthwise thereof, there are two stripes or selvages with just space enough between them to permit of their being cut apart. These inner selvages are identical in width and other characteristics with the two outer selvages. When cut apart the result is two strips of cloth, each 18 inches in width, and each containing a selvage along each of its edges, one selvage having a fast edge and the other not. The goods may be, and sometimes are, woven in single width, but in order to cheapen the cost of manufacture they are generally woven in the double width and afterwards cut apart.

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The importers contend that the goods are not commercially known as "veilings" but are commercially known as "slide chiffons." The Government, on the other hand, insists that the goods are commercially known as "veilings," and that they are chiefly used in the making of veils.

In Heyliger & Raubitschek's case, Abstract 38271, goods precisely like those here in question, except that they were in the single width (18 inches), were held to be dutiable as veilings. In that case we said in part:

It appears from the testimony that the merchandise in question has been known in the wholesale trade and commerce of this country for over 20 years as "chiffon veiling," and during that period has been used for veiling purposes; that within the last three or four years it has also been used to some extent by undertakers to take the place of the glass slide in the top of coffins or caskets, being preferred to the glass, which costs more and is always subject to breakage. In the wholesale undertakers' supply trade it is bought and sold as "slide chiffon," taking that name from its use as a substitute for the glass slide, as above described. There is some testimony in the record to the effect that the article is made of a specially selected and prepared silk, and is given a stiff finish, which particularly adapts it for use by undertakers. Three witnesses testified, however, that they have been buying and selling veilings in the wholesale trade in this country for many years—two of them for over 20 years—and that during that period the article represented by the official sample has been bought and sold as "chiffon veiling." One of these witnesses testified that he never had heard the term "slide chiffon" applied to this article until the trial of this case.

It may therefore be concluded that the merchandise, if imported after being cut apart between the two inner stripes or selvages, would be dutiable as veilings, and the sole question in this case is whether the merchandise is to be excluded from that classification when imported in the piece.

In the case of Auffmordt *v.* United States (7 Ct. Cust. Appls., —; T. D. 36320) the Court of Customs Appeals, in passing upon the question of trimmings in the piece, said in part:

The rule appears to be that goods in the piece which are not commercially known as trimmings and which are not adapted to being used in the form in which imported as such, but require to be cut into forms or made into rosettes or bows before being applied to a garment, are not to be classified as trimmings. On the other hand, goods which are known commercially as trimmings or which are imported in a form in which they are intended to be used directly as trimmings, without anything further being done than a mere cutting of the goods, may be and should be classified as trimmings unless otherwise more specifically provided for.

And in United States *v.* Buss (5 Ct. Cust. Appls., 110; T. D. 34138) the court reviewed the authorities relative to articles in the piece, and said in part:

The rule expressed by the decisions just cited recognizes the fact that most small articles are not produced as individual or separate products of the loom, but for economy of manufacture are first woven "in the piece." The rule of decision is therefore established that where such articles are imported in the piece and nothing remains to be done except to cut them apart they shall be treated for dutiable purposes as if already cut apart and assessed according to their individual character or identity. This

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follows, however, only in case the character or identity of the individual articles is fixed with certainty and in case the woven piece in its entirety is not commercially capable of any other use.

The preponderance of the testimony in this case is that the chief use of the merchandise here in question is in the making of veils, and this, too, whether it is imported in single widths or whether it is imported in the double width and afterwards cut apart in this country. Indeed, the only other use to which the article is put, according to the testimony, is that of a substitute for glass in the slide in the top of coffins or caskets, and before it can be used for this purpose it must be cut into a single width. This is a new use which has grown up within the last few years, and the testimony shows that but a very small proportion of the merchandise is so used.

We think it is sufficiently clear that the merchandise, as it is imported, is designed to be used chiefly as veilings, and that "the woven piece in its entirety is not commercially capable of any other use." Moreover, we think a preponderance of the evidence shows the goods to be commercially known as *veilings*. The use of the words "veils" and "veilings" in the same clause in paragraph 358 suggests that the first relates to a finished article and the second to material. The goods here in question are of a weight and quality and appropriate in every other respect for the making of veils, and the testimony shows that they are chiefly used for that purpose. In our opinion they are material for making veils, and hence are veilings.

The importers attempted to show that it had been the practice of the Government to classify similar goods imported at the port of New York under the tariff act of 1909 as woven silk fabrics and not as veilings, but that effort was met by the testimony of the Government officials familiar with the classification of such merchandise under that act at said port, and we think their testimony shows that the settled practice was to classify the goods as veilings. There may have been exceptional instances in which a different classification was made through a misunderstanding as to the character of the goods where they were not in the "public store" cases, but certainly such exceptional classification can not be said to establish a recognized departmental practice.

The decision of the collector classifying the merchandise for duty as veilings is affirmed in each case.

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(T. D. 36610—G. A. 7949.)

*Validity of reappraisement and of reliquidation.*

LIQUIDATION WHILE REAPPRAISEMENT IS PENDING.

The collector's action in liquidating an entry when an appeal to reappraisement is pending thereon is void.

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PARAGRAPH M OF SECTION 3 OF THE TARIFF ACT OF 1913—SAMPLES.

The provision that no reappraisement shall be considered invalid because of the absence of the merchandise or samples thereof in paragraph M of section 3 is declarative of the law as it theretofore existed and is operative upon all reappraisement proceedings taking place after its passage.

United States General Appraisers, New York, July 31, 1916.

In the matter of protest 772812 of R. S. Stubbs against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

*Strauss & Hedges* (*John F. Strauss* of counsel) for the importer.

*Bert Hanson*, Assistant Attorney General (*Samuel Isenschmid*, special attorney), for the United States.

Before Board 3 (WAITE and HAY, General Appraisers.)

HAY, *General Appraiser:* This protest challenges the validity of the reliquidation by the collector of an entry of certain machinery. The statement of the collector in his letter transmitting the protest is not in entire accord with the facts as disclosed by the record, which are as follows: The merchandise was entered on March 17, 1913, it was appraised by the appraiser at the port of New York on March 25, 1913, and, within the time provided by subsection 13 of section 28 of the act of August 5, 1909, the collector, in pursuance of that provision, appealed to reappraisement on the 22d of May, 1913. While this reappraisement was still pending, and on September 24, 1913, the collector liquidated the entry upon the basis of the value found by the appraiser and from which he had taken an appeal. On December 17, 1913, the value of the merchandise as found by the appraiser was advanced by the single general appraiser, and on December 19, 1913, the importer appealed to a re-reappraisement. On January 5, 1914, the Board of General Appraisers found a value greater than the appraised value, and upon this value the entry was finally reliquidated on June 15, 1914. Against this latter action of the collector the following protest was filed by the importer within the time provided by law:

You have reliquidated the entry and have assessed additional duties and penalties after the expiration of one year from the time of entry and contrary to the act of June 22, 1874, chapter 391, section 21. There is no authority of law for such action. Your so-called reliquidations are illegal and your assessment of duty thereunder is illegal. You should again reliquidate the entry in accordance herewith. The correct amount of duty is that originally entered, liquidated, and paid.

At the hearing the importer, through his counsel, claimed that the reliquidation by the collector was void upon the ground that the reappraisement of the merchandise was void, there having been no samples before the single general appraiser or the Board of General Appraisers, hence the action of the collector in reliquidating the entry upon the value found by the general appraiser after the expiration of one year was in contravention of law This specific claim is not

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set out in the protest, but the record renders it unnecessary for us to detemine whether or not the general claim of invalidity, insomuch as it raises the question as to the collector's jurisdiction, is sufficient to sustain the contention based upon the alleged invalid reappraisement. The record shows that the president of the Board of General Appraisers made a request for the delivery of the machinery after the case had been appealed to reappraisement, and that the importer answered that that was impossible for the reason that it had been forwarded to Oakland, Cal., and was there in use. The record further shows that at the hearing in San Francisco there was a stipulation entered into between counsel waiving the production of samples. The hearing in San Francisco was on the 21st of October, 1913. The tariff law of 1913 became effective on the 3d of October of that year, and in paragraph M of section 3 it was enacted that—

> The decision of the appraiser, or the person acting as such (in case where no objection is made thereto, either by the collector or by the importer, owner, consignee, or agent), or the single general appraiser in case of no appeal, or of the board of three general appraisers, in all reappraisement cases, shall be final and conclusive against all parties and shall not be subject to review in any manner for any cause in any tribunal or court, and the collector or the person acting as such shall ascertain, fix, and liquidate the rate and amount of the duties to be paid on such merchandise, and the dutiable costs and charges thereon, according to law; and no reappraisement or re-reappraisement shall be considered invalid because of the absence of the merchandise or samples thereof before the officer or officers making the same, where no party in interest had demanded the inspection of such merchandise or samples, and where the merchandise or samples were reasonably accessible for inspection.

As was held by us in Favaloro's case, Abstract 39740, this provision was simply declarative of the law as it theretofore existed, and was operative upon all reappraisement proceedings that took place after its passage. Therefore, although the record clearly shows the merchandise was not before the single general appraiser nor the Board of General Appraisers, we think the reappraisement proceeding was not void on that account. The collector's liquidation of the entry on the 24th day of September, 1913, pending an appeal to reappraisement was, however, void. The collector has no more right to liquidate an entry when the same is pending before a general appraiser for reappraisement than he has before the merchandise has been appraised by the appraiser. The proper dutiable value of the merchandise can not be known by the collector until the merchandise has been appraised, and where either the collector or the importer is dissatisfied with the appraisement and shall exercise his statutory right by appealing to reappraisement, the proper dutiable value can not be known by him until the reappraisement proceedings are finally concluded and the statutory remedies of the parties exhausted. This question was before this board many years ago in the Abe Stein Co. case (G. A. 5058, T. D. 23453), and in a clear and informing opinion Judge Somerville used the following language:

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From the facts above set out it is seen that the so-called liquidation was made while an appeal for reappraisement was pending before the board of review and while the question of the proper dutiable value of the merchandise was still unsettled. Under such circumstances, we are of opinion that it was error on the part of the collector to attempt to make a liquidation and that his action was void. This necessarily results from the provisions and general purpose of section 13. The conclusion is irresistible that the evident intention of Congress was that the various demands for reappraisement, expressly allowed by that statute, were intended to operate after the manner of a supersedeas or stay of proceedings. Such matters are usually the subject of special statutory regulations or rules of courts by which some provision is made for the suspension of the power of the lower court until the decision of the appellate tribunal can be obtained. Some such arrangement is obviously necessary to prevent the possible defeat of the jurisdiction of the higher court. Nothing of the kind exists relative to the procedure of this board, except so far as prescribed by the customs administrative act; but not only is it reasonable to assume that such a suspension of action was intended by the framers of that act, but it is not too much to assert that any other rule would be productive of great embarrassment and confusion.

We therefore reach the conclusion that the collector's action in liquidating the entry pending reappraisement was null and void; that the action of the single general appraiser and of the Board of General Appraisers in reappraising the merchandise was valid, and that hence the collector's action in liquidating the entry upon the value fixed by the Board of General Appraisers was valid.

The protest is therefore overruled.

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(T. D. 36611—G. A. 7950.)

*Scientific textbooks.*

"Fleming's Veterinary Obstetrics," a scientific textbook used in veterinary colleges, is a textbook within the meaning of paragraph 426 of the act of 1913, and is therefore properly entitled to free entry thereunder as a textbook used in schools or other educational institutions, as claimed by the importer, rather than dutiable under the provision in paragraph 329 of said act as "books," as classified by the collector.

United States General Appraisers, New York, August 3, 1916.

In the matter of protest 795356 of L. McBean against the assessment of duty by the collector of customs at the port of Detroit.

[Reversed.]

Importer not represented by counsel.

*Bert Hanson*, Assistant Attorney General (*Harry M. Farrell*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; COOPER, G. A., not participating).

FISCHER, *General Appraiser:* This protest covers an importation consisting of 25 copies of a book entitled "Fleming's Veterinary Obstetrics." Duty was levied thereon at the rate of 15 per cent ad valorem under paragraph 329 of the act of 1913 as "books," and it is

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claimed that these particular volumes are entitled to free entry under paragraph 426 of said act as "textbooks used in schools and other educational institutions."

In order to prevail thereunder it is perfectly clear that the provision of law invoked by the importer necessarily requires an affirmative answer to each of these questions:

(1) Is the book a textbook?

(2) Is it used as such in schools and other educational institutions?

Now, ordinarily, it should be a comparatively simple matter, based upon a careful examination of the book itself, to answer the first of these questions, since it is well within the range of common knowledge that textbooks invariably possess certain distinctive features or characteristics which serve to differentiate them from other classes of books. Usually a textbook will show some special preparation and arrangement of the work with a view to rendering it adaptable to classroom use. That fact may readily be determined either from a title page which specifically states that the work was particularly designed for the use of students in schools and colleges, or words to that effect, or the book may contain a specially written introduction or preface, in which the author will undertake to make clear the aims and purposes which actuated him in compiling the book, and in which he invites the attention of the students and teachers to points which he may deem to be of especial interest to them in the work and therefore deserving of special comment on his part. Also, as a general rule, textbooks have glossaries, explanatory notes, and other like features not ordinarily found in other classes of books.

However, we appreciate the fact that there are certain standard books which treat on various scientific studies embraced within the curriculum of colleges, universities, and similar institutions of higher learning. These books are recognized and accepted by the professors in such institutions as representative authoritative works on the subjects therein treated; they are used in the classroom and form the basis of the lectures delivered to the students, who in turn are obliged to procure copies of the books for the purpose of acquiring the information and knowledge which it is necessary for them to possess before they are permitted to graduate in the respective subjects required of them.

It is our opinion that such a book may well be a textbook within the purview of the law, even though it may not possess the different features and characteristics peculiar to textbooks in less advanced studies, such, for instance, as are pursued in grammar and high schools. As belonging to the former class we have in mind the various scientific textbooks which are necessarily used in medical, dental, veterinary, law, and other colleges and universities—textbooks so absolutely essential to the needs of the student that without them he would be unable to pursue his studies.

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To this class of scientific textbooks unquestionably belongs the book here under consideration, entitled "Fleming's Veterinary Obstetrics." There is not the slightest question in our minds on this point. Indeed, the primary object and purpose which impelled the author to write the book is clearly expressed in the opening sentence of the preface to the work. The author states that—

In the preparation of a new edition of "Fleming's Veterinary Obstetrics," the aim of the editor has been to modify and condense it so that it may prove a convenient textbook for the student of veterinary obstetrics. For that purpose many details have been omitted, which although valuable in themselves, could be removed without seriously interfering with the usefulness of the work.

Moreover, the entire work is entitled "A Textbook of Veterinary Obstetrics," and that title is repeated at the top of each alternate page throughout the volume. Furthermore, the last seven pages of the book are devoted to a very elaborately prepared index, through which easy access may be had to any part of the work.

Therefore, in those important particulars at least, the book in question differs from the books which comprised the serial edition known as "Everyman's Library," which formed the subject of the decision of the United States Court of Customs Appeals in the case of Dutton *v.* United States (6 Ct. Cust. Appls., 460; T. D. 35987). Of the latter class of books the court said:

The present publications, however, cover the entire range of the world's classics. They possess no peculiar or exceptional form, but instead appeal both in form and substance to the general reader as much as to educators or students. The books themselves contain no reference to classroom use, nor have they any exceptional title page, introduction, glossary, notes, spacing, or other features such as would adapt them particularly for the use of students at school or would in any manner distinguish them from the ordinary library copies of their respective titles.

Again, unlike the books there in question, the work here under consideration is primarily a book containing facts and principles in a particular branch of study, to wit, veterinary obstetrics, prepared in such form as to be of real value to the student in that subject. Further commenting on the character of the books involved in the Dutton case, *supra*, the court said:

These, however, are not books which undertake to set out in their text the facts or principles of any branch of learning as a means of instruction therein, but are simply famous books which are accepted as masterpieces in poetry, fiction, or other form of literature, and serve as models or illustrative standards in the classroom study of general literature as a branch of learning.

We have, therefore, no hesitancy in stating that the book in question is a textbook within the meaning of paragraph 426, and we so find.

There remains, then, to be determined this question: Is the book used as a textbook in schools and other educational institutions?

That it is so used is absolutely established by the uncontradicted proof offered on behalf of the importer. It appears therefrom that

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of the 125 copies of the book which have been brought into this country by this importer during the past 18 years, 100 copies thereof have been actually delivered to schools and colleges, the balance still remaining unsold in the hands of the importer. Orders have been received from, and copies of the book have been delivered to, the Grand Rapids Veterinary College, Grand Rapids, Mich.; the United States College of Veterinary Surgeons, Washington, D. C.; and the San Francisco Veterinary College.

In addition, there are in evidence herein prospectuses from the Iowa State College, Ames, Iowa; the University of Pennsylvania, Philadelphia, Pa.; and the United States College of Veterinary Surgeons, Washington, D. C., respectively, which contain documentary proof that the students in those institutions are required to study from this particular work as a textbook in connection with their regular studies.

Hence, in view of the conclusive proof offered by the importers both with respect to the character of the book and its use as a textbook in schools and colleges, we hold the same to be properly classifiable as a textbook under paragraph 426 and to be entitled to free entry thereunder. That claim in the protest is therefore sustained and the decision of the collector classifying this work under paragraph 329 is reversed. In all other respects, however, the protest is overruled.

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(T. D. 36612—G. A. 7951.)

*Paper-punching machines not embroidery machines.*

Paper-punching machines, used to punch holes according to drawn patterns or designs in specially prepared paper rolls intended for use in automatic embroidery machines, are not classifiable as embroidery machines within the meaning of paragraph 165 of the act of 1913, even though they simultaneously produce a small piece of embroidery on cloth. The embroidery so produced is an incidental production and is not, strictly speaking, a commercial article, and therefore its production can not be said to control the character and classification of the machine.

United States General Appraisers, New York, August 3, 1916.

In the matter of protests 796233, etc., of Robert Reiner Importing Co. against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

*Comstock & Washburn* (*George J. Puckhafer* of counsel) for the importers.

*Bert Hanson*, Assistant Attorney General (*Martin T. Baldwin*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; COOPER, G. A., not participating).

FISCHER, *General Appraiser:* The report of the local appraiser states that the merchandise in question "consists of a combination of a 13-needle embroidery machine and a card-punching attachment for cutting out the design of the pattern." Duty was levied thereon

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at the rate of 25 per cent ad valorem under the provision in paragraph 165 of the act of 1913 for "embroidery machines," and it is alleged in the protest that said merchandise is properly dutiable at but 20 per cent ad valorem under paragraph 167 of said act as manufactures of metal not specially provided for.

The only witness who appeared herein was Robert Reiner, the president of the importing corporation. His testimony shows that he is now, and during the past 18 years has been, a dealer in embroidery machines; that his corporation at the present time is the largest dealer in that class of machines in the United States; that the machine here under consideration is not an embroidery machine, but is what is known as a paper-punching machine; that the primary object and the sole commercial purpose for which it was constructed and designed, and for which it is bought and sold and employed in the commerce of this country, is to punch holes, according to the pattern and design outlined in pencil or otherwise, in specially prepared paper rolls required for subsequent use in embroidery machines; that as a guide or check upon the accuracy of the work performed by the operator or stitcher, so called, in punching the holes in conformity with the design or pattern desired, there is produced simultaneously with the punching operation, by another part of the machine which contains 13 needles, a piece of embroidery measuring 13 inches in length showing the same pattern or design which has been punched through upon the paper roll; that the length of this piece of embroidery in no case exceeds 13 inches, which is the longest piece of embroidered work of which the machine under consideration is capable of producing. It further appears that the part of the machine which contains the mechanism for turning out this piece of embroidery comprises but one-tenth of the whole machine, whereas that part which is devoted to punching through the design upon the paper roll constitutes nine-tenths of the machine.

The witness further testified that when the holes as outlined on the paper rolls have been punched through thereon, the roll is taken to another machine—an embroidery machine containing 682 needles—and attached thereto, and that it serves automatically to regulate and guide the work of the embroidery machine in producing commercial embroideries measuring from 10 to 15 yards in length of a like pattern to that represented by the punched holes on the paper rolls.

Counsel for the Government in his brief filed herein contends "that the machine in question is an embroidering machine, first, because it actually embroiders a piece of cloth, and second, because its other work, the punching of the paper roll, is a necessary preliminary process in the production of other pieces of embroidery in large commercial sizes on an automatic embroidery machine."

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The record fully confutes the first contention, while the reasoning advanced in support of the second would be as clearly unsound and untenable in practice as it is novel and extraordinary in theory. If a machine which is employed to make parts or attachments intended for use on an automatic embroidery machine itself becomes, by reason of the nature of its product, an embroidery machine and so classifiable for tariff purposes, then for the same reason and with the same sense of propriety should a machine which cuts the rolls used in automatic player-pianos be itself treated as an automatic player-piano, the machine which makes graphophone disks as a graphophone, a typesetting machine as a printing press, and a typewriting machine which cuts, the stencils used in mimeograph work be considered a mimeograph machine.

That the machine in question is clearly not an embroidery machine within the meaning of the law is conclusively proven of record. Whatever capabilities it may posses for doing embroidery work is so insignificant and incidental in character compared with the card-punching function for which the machine was specially constructed and designed, as to eliminate the former from consideration as a factor in determining the tariff classification of the article. Its bona fide and commercial use is to cut the paper rolls for subsequent use in automatic embroidery machines and not to turn out embroideries. The embroidery work it performs has no commercial value as such and is purely incidental and secondary to the card-punching function of the machine.

The protests are accordingly sustained and the decisions of the collector reversed.

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(T. D. 36613—G. A. 7952.)

*Lanolin—Adeps lanæ.*

In adding the provision for "lanolin" in the tariff act of 1913, it must be concluded, in the absence of testimony defining the term in the trade and considering only the common meaning of the word, that Congress intended to differentiate between adeps lanæ and lanolin, and to leave adeps lanæ anhydrous to be classified as a wool grease, refined, at one-half of 1 cent per pound, and to tax lanolin at 1 cent per pound under paragraph 44 of said act.

United States General Appraisers, New York, August 4, 1916.

In the matter of protests 763215, etc., of Merck & Co. *et al.*, against the assessment of duty by the collector of customs at the port of New York.

[Modified.]

*Strauss & Hedges* for the importers.

*Bert Hanson*, Assistant Attorney General (*Charles D. Lawrence*, special attorney), for the United States.

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Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers; Sullivan, G. A., not participating).

Brown, *General Appraiser:* Paragraph 44 of the tariff act of 1913 reads in part as follows:

Wool grease, including that known commercially as degras or brown wool grease, crude and not refined or improved in value or condition, one-fourth cent per pound; refined or improved in value or condition, and not specially provided for in this section, one-half cent per pound; lanolin, 1 cent per pound.

This suit is brought to determine whether certain so-called adeps lanæ anhydrous is properly dutiable as "lanolin" under the last clause above quoted, as classified by the collector, or as "wool grease, refined or improved in value or condition," under the second clause.

It is true that the protests cover two products, one adeps lanæ anhydrous and the other adeps lanæ cum aqua. The importers claim that the latter is the "lanolin" designated in this paragraph and the former is not. The Government claims, on the other hand, that both the anhydrous and hydrous varieties are lanolin and properly classified under that name.

Both adeps lanæ anhydrous and adeps lanæ cum aqua are manufactured from wool grease. Wool grease, obtained by extracting raw wool with volatile solvents, contains only the natural constituents, viz, free fatty acids, neutral esters, and free alcohols, in admixture with potassium salts of fatty acids. The constituents vary within certain limits as is usual with natural products, according to the locality from which the sheep comes, Brazil, Australia, South America, or Russia.

The provision in the act of 1897 reads:

279. * * * Wool grease, including that known commercially as degras or brown wool grease, one-half of 1 cent per pound.

In the act of 1909, the provision was enacted to read as follows:

290. * * * Wool grease, including that known commercially as degras or brown wool grease, crude and not refined, or improved in value or condition, one-fourth of 1 cent per pound; refined, or improved in value or condition, and not specially provided for in this section, one-half of 1 cent per pound.

Under the latter act, in the case of Koechl & Co. *v.* United States (3 Ct. Cust. Appls., 316; T. D. 32619) the court held that adeps lanæ, both hydrous and anhydrous, was not medicinal in its qualities, and secondly, even if it had been, the provision for refined wool grease was more specific than that for medicinal preparations, and consequently they should be classified as refined wool grease. In that case the court used the following descriptive language:

The merchandise involved in the controversy is known to the Pharmacopœia and the Dispensatory as adeps lanæ, which is the scientific designation and Latin equivalent for "wool grease." Hydrous adeps lanæ is that which carries water in suspension and anhydrous that from which all water has been expelled. Wool grease is the fatty

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substance which results from the washing of the wool. This fatty substance, just as it comes from the wool, contains some free potash and is mixed with dirt, water, and other foreign matter derived from the substances employed as cleansing materials. The mixture is drawn off into tanks and when relieved of the dirt, excess water, and alkalies derived from the agencies used in washing the wool, it becomes degras or raw wool grease which normally contains some fatty acids and free potash. * * *

When degras, or raw wool grease, has been freed of the uncombined alkalies and fatty acids normally found in it, it is denominated "neutral wool grease." Neutral wool grease is used for making soap, the manufacture of paints, and the compounding of cylinder and machinery oils of the finer quality. If the cleansing and refining of the degras, or crude wool grease, proceeds so far as to leave no perceptible odor of wool and absolutely no uncombined alkalies or fatty acids, the product takes on the scientific name of adeps lanæ or is given by the manufacturers some fanciful proprietary designation, such as lanæ, lanam, or lanolin. Adeps lanæ, lanam, lanæ, or lanolin is used by the pharmacist as a basis for ointments and as a carrier for soluble medicinal salts. When applied to the skin it renders the tissues soft and pliable and serves the purpose of an emollient.

The court further says, on page 318:

Lanolin was originally a preparation patented in the United States by Dr. Otto Braun and Dr. Oscar Lieberich, of Berlin, Germany. This preparation was described by the patentees in the specifications of their letters patent as "a new manufacture of fatty matter from wool fat, * * * and as a compound of clean wool fat with water."

It is to be noted in this case that there was no question of distinction between adeps lanæ anhydrous and adeps lanæ cum aqua, the sole question being whether they were both to be classified as medicinal preparations or as refined wool grease.

The court further says (p. 318), after discussing some of the earlier decisions:

In the cases subsequently decided the importers seemingly raised no issue as to the therapeutic qualities of the merchandise, but endeavored to secure the admission of it as wool grease, or as rendered oil, or as something other than lanolin and bearing a different name. This the board and the courts would not permit, and just as often as the issue was presented it was held that wool grease, freed of dirt, water, alkalies, and fatty acids, was lanolin, and therefore subject to the rule laid down in Movius & Son *v.* United States (66 Fed., 734).

In the Movius case the court had held it to be a medicinal proprietary preparation under the act of 1890.

It is to be noted that in these cases thus discussed by the court adeps lanæ anhydrous was held to be like lanolin in that it was not medicinal, but in the case at bar we must determine whether it is lanolin or another form of wool grease refined.

The standard authority on this class of subjects is Dr. J. Lewkowitsch, consulting and analytical chemist to the City and Guilds of London Institute. In his work on the "Chemical Technology and Analysis of Oils, Fats, and Waxes" (1914), after describing wool fat (which he designates under various titles, "Wool grease," "Recovered grease," "Brown grease"), as the natural grease contained in sheep's wool

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which is obtained in the course of preparing the raw material for spinning, and is removed by means of dilute soap (or sodium carbonate) solutions, or by extraction with volatile solvents, he says:

Since the valuable property of wool fat, viz, that of yielding emulsions with water which are easily absorbed by the skin, has been rediscovered, the raw wool fat is purified by various (patented) processes, and the refined neutral wool fat—*wool wax*—is brought into commerce either in an anhydrous state (under such names as "adeps lanæ"), or in the hydrated state (under the name "lanolin").

Anhydrous wool wax is a pale yellow, translucent substance, having a slight but not unpleasant smell (in contradistinction to raw wool grease, which is characterized by its peculiar disagreeable smell, recalling that of sheep). Its consistence is that of a thin ointment. It dissolves readily in chloroform, ether, and ethyl acetate. Although insoluble in water, it possesses the remarkable property of absorbing larger quantities of water than any other wax; even if as much as 80 parts of water be mixed with 100 parts of wax, the emulsion which is formed with water has the appearance of a perfectly homogeneous mass. A mixture of neutral wax and water, containing about 22–25 per cent of the latter, is sold in commerce under the name "lanolin."

In Volume III, page 432, under the title "Wool Fat, Wool Grease, Recovered Grease, Brown Grease," after describing some of the processes of manufacture, he says:

The resulting wool wax was dark yellow, and as all attempts to bleach it led to unsatisfactory results, it was intermixed with about 20–25 per cent of water, in order to obtain a lighter colored product. This was brought into commerce under the name "lanolin." The anhydrous product is obtainable in commerce as *adeps lanæ*.

Then, after describing further processes and that of John Smith & Son, and Leach, he says (p. 436) about that particular process:

It will thus be seen that in this process the free fatty acids of the wool grease, as also the fatty acids introduced as soap in the scouring of the wool, are lost. The wool grease is worked up, in the manner described above, into "lanolin," or sold as "adeps lanæ."

The author thus limits the word "lanolin" to the hydrous product, and describes adeps lanæ anhydrous and lanolin as two separate articles of commerce, although they differ simply in the fact that one contains a certain per cent of water and the other does not.

We have in this case no testimony concerning commercial designation and must assume for the purpose of this record therefore that it is the same as the common meaning.

The Encyclopædia Britannica (1911), Volume XVI, page 183, describes lanolin as—

The commercial name of a preparation styled adeps lanæ hydrous in the British Pharmacopœia, and which consists of 7 ounces of neutral wool fat (adeps lanæ) mixed with 3 fluid ounces of water. * * * It is a translucent, unctuous substance which has the property of taking up large quantities of water. * * * Owing to the ease with which it penetrates the skin, wool fat both in the anhydrous form and as lanolin, sometimes mixed with such substances as vaseline or fatty oils, is largely often employed as a basis for ointments.

The United States Dispensatory (edition of 1907) and the United States Pharmacopœia (1905), and "New and Nonofficial Remedies,"

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published by the American Medical Association (1912), all distinguish lanolin from adeps lanæ anhydrous.

The dictionary definitions cited by the Government which simply define lanolin as being a compound of cholesterin and fatty matter derived from sheep's wool, without mentioning the intervening product, adeps lanæ anhydrous, do not make against or minimize the effect of their separate definition as two distinct substances in the authorities above quoted.

Further, it would seem from the careful and detailed description of the manufacture of adeps lanæ and lanolin in the books that these two substances cover all or nearly all forms of refined wool grease, so that there would be little, if anything, left to fall under the provision for refined wool grease if both adeps lanæ anhydrous and lanolin were classified under the latter name.

All of which tends to show that the Congress, in adding the term "lanolin" in the act of 1913, intended to leave the distinct and separate intermediate product, adeps lanæ anhydrous, to be classified, as before, as refined wool grease, and to tax the hydrous form only under the term "lanolin." At least, we must so hold in the absence of any testimony by commercial men engaged in buying and selling these substances that they are bought and sold as one and the same thing.

The protests are therefore overruled as to the adeps lanæ cum aqua and sustained as to the adeps lanæ anhydrous, which should be classified as wool grease, refined, at one-half cent per pound under paragraph 44.

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(T. D. 36614—G. A. 7953.)

*Personal effects.*

RESIDENCE OF MINOR.

The status of a minor is that of the parent; hence the minor daughter of a resident of the United States, spending several years abroad as a student, is yet a resident of the United States within the meaning of paragraph 642, tariff act of 1913.

United States General Appraisers, New York, August 3, 1916.

In the matter of protest 804444 of Ruth Winters against the assessment of duty by the collector of customs at the port of Seattle.

[Affirmed.]

*Francis E. Hamilton* for the importer.

*Bert Hanson*, Assistant Attorney General (*Robert Hardison*, special attorney), for the United States.

Before Board 3 (WAITE and HAY, General Appraisers).

HAY, *General Appraiser:* But one question arises in this case, and that is as to the residence of the protestant. Miss Ruth Winters, who filed the protest in this case, prior to going to Berlin to study music, resided with her parents in the State of Washington. She is a native of the United States, as were her parents. There is some

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little conflict in the transcript of the testimony as to when she went abroad. There was, however, no conflict in the testimony as given. In the transcript the attorney for the protestant states that Miss Winters went abroad in 1909; on cross-examination she herself swears that she went abroad in 1909; but on page 4 of the transcript her counsel asks her if she changed her residence in 1907, and her answer appears to be, "I went to Berlin." We think this is an error, as the record, we think, shows she was the greater part of the five years from 1909 to 1914 in Berlin. She was 15 years old at the time she went to Berlin, and her purpose in going there was to study music. She was maintained there by remittances from her father until his death, and since then has been maintained by remittances from her father's estate, which remains unsettled. During the five years from 1909 to 1914 she returned to the United States a number of times, and at one time her mother spent a year with her in Europe, traveling part of the time. During the greater part of the time that she was in Europe she was studying music, preparing herself to sing in grand opera. She came to the United States in July, 1914, intending to return to Berlin, but has been prevented by the war.

The residence of an adult is one of intention; but, as has been pointed out by the board in a number of cases, that intention must be one formed at the time, to be determined not from the mere statement of the party but from all the facts. It is apparent, we think, from the testimony that Miss Winters's intention was not entirely clear. She was the only witness called upon the subject, but was very frank and intelligent in her answers, and the conclusion, we think, to be drawn from her own statements is that she had no very definite purpose as to her residence. In fact, in answer to a question on cross-examination as to whether or not she had any fixed purpose not to reside in the United States, she said, "No; I haven't any fixed purpose." Her purpose, undoubtedly, was to remain in Berlin so long as was necessary to complete her musical education, and thereafter either to return to the United States or remain in Europe, as circumstances at the time indicated to be best.

Did the decision of this case turn upon Miss Winters's intention we would be left, from the facts before us, somewhat in doubt. We think, however, the fact that she was a minor rendered her, in law, incapable of forming an intention as to her residence. The testimony shows she was 15 at the time she went abroad, in 1909. She was, therefore, yet under 21 when she returned, in 1914. The status of a minor under the provision of law here invoked was discussed by us in Marie R. Glover's case, G. A. 7114 (T. D. 31015), a case very similar to the one at bar, in which we said:

> It has been uniformly held that the residence of an infant continues to be that of the parents through minority, and changes only with a change of residence on the part of the parents.



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In that case the cases of Dresser *v.* Edison Illuminating Co. (49 Fed., 257), *Ex parte* Petterson (166 Fed., 536), and Lamar *v.* Micou (112 U. S., 452) were cited as supporting the view there expressed. This case and the cases there cited, we think, must control our decision in the case at bar.

The protest is therefore overruled.

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(T. D. 36615—G. A. 7954.)

*Roofing felt.*

Roofing felt, so described on the invoice and returned as such by the appraiser, is properly dutiable under the specific provision therefor in paragraph 320 of the act of 1913, rather than under paragraph 332 of said act as manufactures of paper. This conclusion is inevitable where the undisputed facts warrant such a finding, even though the importer should fail to appear for the purpose of prosecuting the claims alleged in his protest.—Lange *v.* United States (3 Ct. Cust. Appls., 440; T. D. 33005).

United States General Appraisers, New York, August 4, 1916.

In the matter of protests 802776, etc., of P. McGettrick against the assessment of duty by the collector of customs at the port of St. Albans.

[Reversed.]

Importer not represented by counsel.

*Bert Hanson*, Assistant Attorney General (*Charles D. Lawrence*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers, HOWELL, G. A., not participating).

FISCHER, *General Apprasier:* These protests are lodged against the action of the collector at the port of St. Albans in arbitrarily fixing the classification of certain merchandise wholly at variance with conceded and established facts shown by the record. The merchandise is described on the invoices as "roofing felt," and was advisorily returned by the local appraiser as "roofing felt, manfr. of paper n. s. p. f." Duty was levied thereon at the rate of 25 per cent ad valorem under paragraph 332 of the act of 1913 as manufactures of paper. The importer contends that the merchandise consists of unsaturated roofing felt, and as such is properly dutiable at the rate of 5 per cent ad valorem under the provisions in paragraph 320 of said act for "sheathing paper, pulp board in rolls, not laminated, *roofing felt.*"

At the time and place designated for the trial of the issues involved herein the importer failed to appear either in person or by attorney, and in accordance with the rules of this board the protests were deemed to have been submitted on the record.

Therefore by virtue of the rule enunciated by the United States Court of Customs Appeals in the case of Lange Soap Co. *v.* United

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States (3 Ct. Cust. Appls., 440; T. D. 33005), it becomes the duty of this board, where the undisputed facts established of record so warrant it, to proceed to make a finding, even though the protestant should have failed to appear at the hearing either in person or by attorney for the purpose of prosecuting the claims alleged in his protest. In the course of his opinion in that case, Judge De Vries, writing for the court, said:

> It is quite true that a presumption attends the correctness of the decision of the collector, but that is a disputable presumption and one which may be rebutted by the facts of the record. That presumption is the usual one reposing confidence in the judgment of public officials especially selected to perform a particular public office. We can, therefore, conceive of no facts that would so completely dispel this presumption as the facts disclosed by this record.

The present case is on all fours with the Lange case, *supra*. Here the record discloses an absolute agreement as to the character of the merchandise. It is reported by the appraiser to be roofing felt and it is likewise described by the importer. Surely, such a record requires no further proof to establish that the merchandise is in fact roofing felt. Indeed, as that fact is wholly undisputed, corroborative or affirmative testimony would be entirely superfluous and unnecessary.

In view of these circumstances we are utterly at a loss to understand how duty can be exacted under one paragraph of the tariff act when the admitted facts positively determine the classification of the merchandise under the specific language contained in another paragraph of the same act. Plainly, it was the duty of the collector on ascertaining that the article was conceded to be roofing felt to have so classified it under the specific provision therefor in paragraph 320 unless he deemed such finding not warranted by the facts. From the report of that officer, however, it would appear that he imposed duty on the article under paragraph 332 in compliance, as he thought, with the instructions contained in Treasury Department circular, T. D. 36137. Such instructions, however, did not direct collectors to classify roofing felt as paper; it instructed them to classify paper which they considered not to be roofing paper under the provision for paper or manufactures of paper. In the present instance the appraiser found the merchandise to consist of roofing felt, and so reported his finding to the collector. Manifestly, with the character of the paper thus definitely determined by the officer who examined and passed upon it, and the collector presumably having nothing before him upon which to base a contrary conclusion, it would seem that the only proper course for the latter to pursue was to hold the merchandise dutiable as roofing felt.

Moreover, the concessions made in the reports of the appraiser and collector concerning the precise character of the merchandise made it wholly unnecessary for the importer to offer any proof tending to

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prove commercial designation. Proof to that effect would have been necessary if the Government had disputed the character of the merchandise.

The above-mentioned decision of the court in the Lange case, *supra*, in effect, sustained Rule XI of this board, which provides that—

Where there is no appearance on the part of either of the parties to a case when the same is called, it shall be considered submitted and may be determined by the board on the record.

We accordingly find from the record that the merchandise in question consists of roofing felt, and as such we hold it to be dutiable at the rate of 5 per cent ad valorem under paragraph 320, as alleged in the protests. The protests are therefore sustained and the decision of the collector in each instance is reversed.

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## *Abstracts of decisions of the Board of General Appraisers.*

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*Board 1*—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

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BEFORE BOARD 1, JULY 31, 1916.

**No. 40043.**—Protest 795349 of Geo. Borgfeldt & Co. (New York).

HAND SEWING MACHINES—TOYS.

SULLIVAN, *General Appraiser:* The merchandise consists of hand sewing machines classified as toys under paragraph 342 at 35 per cent ad valorem and claimed to be free as sewing machines under paragraph 441 of the tariff act of 1913.

The facts are that the machines are in every way typical of the ordinary sewing machine, except that they are propelled by hand instead of by foot power, and except Exhibit 4, which is an extremely small machine, not exceeding 4 inches in length.

A practical demonstration was made in the board room during the trial by a seamstress, who attached Exhibit 4, the smallest machine, to a board and demonstrated that it could be used for practical purposes.

The testimony is without conflict that these machines have a practical use and, on the part of the protestant, is clear and convincing that families of limited means purchase similar machines, and use them for practical purposes in hemming aprons, towels, and other articles; that they are sold to all classes of trade, and, while it is true, as shown by the testimony on the part of the Government, they are found in what is known as the "toy department" in such stores as R. H. Macy's and John Wanamaker's, yet it is also shown that there is a sewing-machine department in those establishments, and that hand sewing machines are there sold. A representative of the Singer Sewing Machine Co. testified, and claimed that the smaller machine was not suitable for practical use, but that the larger machine was; that it was similar in size to the machine manufactured and sold by the Singer Sewing Machine Co., described in the testimony as Exhibit B. A comparison of Exhibit B with the exhibits introduced by the protestants indicates to us a similarity to each other, both as to construction and use.

That the machines in question are not toys is unquestioned from this record.

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Toys have been defined in the Illfelder case (1 Ct. Cust. Appls., 109, 111; T. D. 31115) as follows:

In common speech, and as popularly understood, a toy is essentially a plaything, something which is intended and designed for the amusement of children only, and which by its very nature and character is *reasonably* fitted for no other purpose. Although an article may be chiefly used for the amusement of children, if its nature and character are such that it is also reasonably fitted for the amusement of adults, or if it is reasonably capable of use for some practical purpose other than the amusement of children, it can not be classed as a toy unless it is affirmatively shown by the importer that it is so known and designated by the trade generally.

These machines do not come within that rule.

In Illfelder *v.* United States (7 Ct. Cust. Appls., —; T. D. 36311) the Court of Customs Appeals in reversing the board as to its classification of water-color boxes, reiterated its former holding, and held that small boxes containing water colors of good quality and articles incidental to their use, designed, adapted, and used for elementary instruction in art and used to some extent also by artists, are not dutiable as toys under paragraph 342, but as artists' paints or colors under paragraph 63, act of 1913.

The case at bar is much stronger in its facts than the cited case. The testimony sustains the contention of the protestant that these hand sewing machines are articles of utility; that they would not be used by children as playthings; and that some experience is required for their proper use. In our judgment these machines are not toys for the amusement of children.

In protest 771330 of Sears, Roebuck & Co. (Abstract 39148, Jan. 21, 1916) we held that similar machines had a practical use, and were not toys. The machines in the case at bar fall squarely within the provisions of paragraph 441, and are free of duty. The protest is sustained, and the decision of the collector reversed.

**No. 40044.**—Protest 771506 of Kronfeld, Saunders & Co. (New York).

NEEDLECASES.

SULLIVAN, *General Appraiser:* The merchandise consists of a metal case containing a thimble and a hollow metal bobbin on which black, white, and brown thread is wound, and which is also a receptacle for three needles inclosed therein. It was assessed with duty as articles designed to be worn on apparel or carried on or about or attached to the person, composed wholly or in chief value of metal, valued above 20 cents per dozen pieces, at 60 per cent ad valorem, under paragraph 356 of the act of 1913. The claim relied upon in the protest is that it is dutiable at 20 per cent ad valorem under paragraph 135 of the same act, which provides for "needlecases * * * furnished with assortments of needles or combinations of needles and other articles."

The testimony discloses that it is put up in this compact form in order that it may be convenient to carry about, and that it is actually put into cases which the importers get up. When asked what kind of cases, the witness testified, "limousine case or something like that." He also testified that his firm did not sell them in women's bags, but only put them in limousine cases.

We have first to consider whether this merchandise is within the provisions of paragraph 356. Without question it is an article "valued above 20 cents per dozen pieces" composed of metal; but in our opinion it is not "*designed* to be worn on apparel or carried on or about or attached to the person" such as the articles enumerated in the paragraph and like articles thereto.

The Court of Customs Appeals in affirming the board's decision on fancy metal pencils (G. A. 7625; T. D. 34870) laid down the rule that an article to be within the paragraph must be "designed to be worn on apparel or carried on or about or attached to the person in the same manner as are the enumerated articles and like articles *when in their customary use.*" The court also said that the articles enumerated in the paragraph in one particular are all alike, "and that *in their customary use* they are all carried upon the person of the user, not for warmth or protection like clothing,

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but rather as incidental articles of mere personal comfort, convenience, or adornment," and held that this characteristic belonged to the metal pencils in question in that case. Gallagher *v.* United States (6 Ct. Cust. Appls., 105; T. D. 35343).

In United States *v.* American Bead Co. (7 Ct. Cust. Appls., —; T. D. 36456) the court affirmed the board's decision holding rosaries dutiable according to the component material of chief value. The first paragraph of the headnote in that case, which aptly summarizes the reasons for the court's decision, is as follows:

An article to be dutiable under the third clause of paragraph 356, tariff act of 1913, must be *designed* to be worn on apparel or carried on or about or attached to the person, and, if not enumerated in the clause, must be *like* the articles enumerated. The word *designed* should not be construed to mean *susceptible* of being so worn or carried.

The court held that certain silver-plated metal rosaries were not within the paragraph for the reason that the testimony showed they were not designed for use as jewelry, were not intended to be carried on or about or attached to the person, or worn on or as a part of the attire, and that they had only a devotional use.

In Rumpp *v.* United States (7 Ct. Cust. Appls., —; T. D. 36507), among other articles the court had before it *pin and needle boxes*, and pin or hairpin boxes used chiefly, if not exclusively, by women, imported for use as fittings for leather dressing cases, manicure cases, workbaskets, ladies' hand bags, and cases of like character made of leather. The court held the pin and needle boxes, and pin or hairpin boxes, were not articles which were "customarily or usually carried by men on or about or attached to the person, and that their shape, size, and construction are of a character which renders them unsuitable to be so carried by women as separate entities"; that they were not covered by paragraph 356, but were within the provisions of paragraph 167.

For the reasons set forth in the Gallagher, American Bead, and Rumpp cases, supra, we are of opinion that these needlecases, "furnished with * * * combinations of needles and other articles," are not within the provisions of the third clause of paragraph 356.

In the matter of protest 751736 of Poirier & Lindeman, G. A. 7671 (T. D. 35099), the board classified "needlecases containing a celluloid thimble and a hollow celluloid bobbin on which thread is wound, and in which are inclosed two needles and two pins," under the hereinbefore-quoted provision of paragraph 135, rather than as manufactures of pyroxylin under paragraph 25. That case was affirmed by the Court of Customs Appeals in United States *v.* Poirier & Lindeman (6 Ct. Cust. Appls., 239; T. D. 35470), holding that "the fact that the needles in this case are comparatively insignificant in number or value is not, as claimed by the Government, at all determinative." The court then went on to say:

We think the question is rather whether the needles are designed to serve an important part in the use to which the cases as furnished are put. As we have pointed out, these boxes and their contents would be relatively of but little use without the needles, while with the needles they answer, as it seems to us, the call of the paragraph for needlecases furnished with assortments of needles or combinations thereof and other articles.

There are but two differences between the merchandise covered by the case at bar and that in the Poirier & Lindeman case, supra, viz, the case is composed of metal instead of celluloid, and the pins are omitted therefrom. These differences are immaterial. We therefore hold the merchandise dutiable under paragraph 135 at 20 per cent ad valorem. The protest is sustained, and the decision of the collector reversed.

**No. 40045.**—Protests 762905, etc., of A. & H. Veith (New York).

METAL SHOE SLIDES—BUCKLES—BUTTONS.

SULLIVAN, *General Appraiser:* The merchandise consists of shoe slides or buckles and metal buttons composed of stamped steel. The buttons being valued above 20

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cents per dozen pieces were assessed with duty at 60 per cent ad valorem under that part of paragraph 356 of the tariff act of 1913 which provides for—

Articles valued above 20 cents per dozen pieces designed to be worn on apparel or carried on or about or attached to the person, such as and including buckles, * * * *dress buttons*, * * * and like articles; all the foregoing and parts thereof, finished or partly finished, composed of metal.

The slides or buckles were assessed with duty at 20 per cent ad valorem under that part of paragraph 167 which provides for—

Articles or wares not specially provided for in this section; * * * if composed wholly or in chief value of iron, steel, lead, copper, brass, nickel, pewter, zinc, aluminum, or other metal, but not plated with gold or silver, and whether partly or wholly manufactured.

And items 14366 and 14479 (also used to ornament shoes) covered by protest 767778 were assessed with duty at 50 per cent ad valorem under the last part of paragraph 356, which covers—

Stampings, galleries, mesh and other materials of metal, whether or not set with glass or paste, finished or partly finished, separate or in strips or sheets, suitable for use in the manufacture of any of the foregoing articles in this paragraph.

Items 14366 and 14479 are valued under 20 cents per dozen pieces and are shown to be finished articles, ready for use in the condition as imported.

As shown by the protestants' brief, the claims relied upon are that slides or buckles are dutiable at 15 per cent ad valorem as "pressed, sheared, or stamped shapes, not advanced in value or condition by any process or operation subsequent to the process of stamping" under paragraph 110; that the buttons are dutiable at 15 per cent ad valorem under paragraph 151 as metal buttons; and that items 14366 and 14479 are dutiable at 20 per cent ad valorem under paragraph 167. There is also a claim in each of the protests for a duty of 20 per cent ad valorem under paragraph 167.

As to the slides or buckles, the testimony of the single witness called by the protestants is that he has seen them made; that "they are made of a sheet of steel pressed out—stamped out"; and that there is no other "manipulation or operation or process after stamping." He further testified that they are finished articles in the condition in which imported and that they are used as shoe slides and buckles on shoes. Some illustrations were then received in evidence showing their use on ladies' shoes. The witness concluded his testimony on direct by stating that they are not backed or further manipulated or manufactured before being used as shoe buckles, but admitted on cross-examination that they are sometimes backed up.

As to the buttons, the testimony is that they are sold exclusively to shoe manufacturers, and illustrations were received in evidence showing their use on ladies' shoes. The testimony shows that the buttons are invoiced as "buttons, steel buttons," and the slides or buckles as "steel ornament or steel buckle."

In re protest 730554, etc., of American Express Co., Abstract 36878 (T. D. 34920) covered metal slides or buckles to be worn on shoes or slippers. We held that such of the merchandise in that case as was worth over 20 cents per dozen pieces was dutiable at 60 per cent ad valorem under paragraph 356; and that such as was worth less than 20 cents per dozen pieces was dutiable at 20 per cent ad valorem under paragraph 167.

As to the buttons, under the tariff act of 1909 we held certain mother-of-pearl *vest* buttons set with imitations of various precious stones, valued at more than 20 cents per dozen pieces, were dutiable under the *eo nomine* provision in paragraph 448 of that act for "*dress* buttons * * *, if set with imitation precious stones composed of glass or paste, * * * designed to be worn on apparel or carried on or about or attached to the person, valued at 20 cents per dozen pieces." In re protest 416450 of E. P. Stähel & Co., G. A. 7080 (T. D. 30863).

In our decision In re protests 737494, etc., of Rothschild Bros. & Co., G. A., 7805 (T. D. 35849), holding certain metal buttons, round or oblong, valued above 20 cents

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per dozen pieces (used both for utilitarian and ornamental purposes on suits or coats), dress buttons, properly dutiable under paragraph 356, tariff act of 1913, we quoted the following from Lent *v.* United States (1 Ct. Cust. Appls., 542, 544; T. D. 31549), which affirmed the board's decision in Lent's case, Abstract 23614 (T. D. 30754):

If the term "dress buttons" does not mean a fancy button, a button intended to adorn or ornament the dress, a button designed for something more than mere utility. it is hard to see just what meaning consistent with paragraph 427 (act of 1909) could be given to it. If the signification contended for by the importer is given to it, namely, buttons worn on ladies' dresses, then all buttons so worn would become dutiable at a rate different from that of the very same class of button not so worn. With such an interpretation a high-priced, beautifully finished, and very ornamental button appropriate for men's apparel alone would carry a lower rate of duty than a common, ordinary button designed exclusively for women's dresses. When Congress provided for dress buttons we can not believe that it intended to make any such distinction.

It seems to us that these buckles or slides, being worth less than 20 cents per dozen pieces and composed of steel, are dutiable under paragraph 167 at 20 per cent ad valorem. They are not dutiable under paragraph 356 at 60 per cent ad valorem for the reason they have not the requisite value; nor are they dutiable under the last clause of that paragraph at 50 per cent ad valorem, as contended in the Government's brief, for the reason they are used in their present condition without further manipulation. We think the fact brought out on cross-examination that they are sometimes backed up is immaterial, as many finished articles may at times be further manipulated or added to.

The buttons, as shown by the samples, are very ornamental. It is true they are not worn on dresses. It is not necessary that they should be, in view of the Stahel and Lent cases, supra. In our opinion, Congress intended by the term "dress button" to mean a dressy, ornamental, or fancy button of the value and composition named in paragraph 356. These buttons meet those requirements. Therefore the fact that they are worn on shoes, rather than on dresses, in our opinion is immaterial.

But even if these were not dress buttons, it seems to us they are within the paragraph for the reason they have the requisite value, are designed to be worn on apparel, viz, shoes, are composed of metal, and are like articles to the dress buttons enumerated therein, because "in their customary use they are all carried upon the person of the user, not for warmth or protection like clothing, but rather as incidental articles of mere personal * * * adornment." Gallagher *v.* United States (6 Ct. Cust. Appls., 105; T. D. 35343).

Items 14366 and 14479 are not dutiable under the last clause of paragraph 356, being finished articles; nor are they dutiable under the third clause, as they have not the requisite value. We hold that the shoe slides or buckles and metal buttons were properly classified by the collector, and that items 14366 and 14479 are properly dutiable at 20 per cent ad valorem under paragraph 167, as claimed in the protests. The protests are sustained as indicated as far as items 14366 and 14479 are concerned, but overruled in all other respects. The collector's decision is modified accordingly in each case.

**No. 40046.**—Protests 776931, etc., of B. Blumenthal & Co. et al. (New York).

Steel Stampings—Shoe Slides—Buckles.—Metal shoe slides or buckles classified at 50 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as steel stampings at 20 per cent under paragraph 167.

Opinion by Sullivan, G. A. Protests sustained in part. Abstract 40045 followed.

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Before Board 2, July 31, 1916.

**No. 40047.**—Protest 786071 of Wm. H. Stiner & Son (New York).

Silk Hand Bags in Part of Ornaments.—Hand bags composed of silk and made in part of silk ornaments, classified at 60 per cent ad valorem under paragraph 358,

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tariff act of 1913, are claimed dutiable as manufactures in chief value of silk at 45 per cent under paragraph 318, or as beaded articles at 50 per cent under paragraph 333.

Opinion by HOWELL, G. A. On the authority of Abstract 37624, affirmed in Morimura *v.* United States (6 Ct. Cust. Appls., 475; T. D. 36119), the articles composed in part of ornaments were held properly classified under paragraph 358. It was claimed that certain articles were not in part of ornaments, but these were not segregated by the importer. Protest overruled. United States *v.* Ranlett (172 U. S., 133) cited.

**No. 40048.**—Protest 770897 of Neuberger & Co. (New York).

BRAIDS.—This protest is against the classification of braids and other articles at 60 per cent ad valorem under paragraph 358, tariff act of 1913.

Opinion by HOWELL, G. A. Protest unsupported; overruled.

**No. 40049.**—Protest 791029 of Kronfeld, Saunders & Co. (New York).

WEARING APPAREL IN PART OF BRAID.—Articles of wearing apparel composed in part of silk and made in part of braid or netting, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as silk wearing apparel at 50 per cent under paragraph 317.

Opinion by HOWELL, G. A. On the authority of United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388), the wearing apparel in question was held dutiable under paragraph 317.

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BEFORE BOARD 3, JULY 31, 1916.

**No. 40050.**—Protest 798508 of S. S. White D. M. Co. (Philadelphia).

LIQUIDATION—ADDITIONAL DUTY.

HAY, *General Appraiser:* This is a protest against the liquidation of a certain entry by the collector at the port of Philadelphia, the protestants claiming that in determining the additional duty due under the provisions of paragraph I of section 3 of the act of 1913 the collector erred in that he adopted as the entered value of the merchandise the per se value thereof and deducted the same from the appraised value, the protestants claiming that the appraised value should be compared with the value declared in the entry, including the nondutiable charges.

The informal and sometimes unintelligible way in which most or all records are made upon papers at the customhouses render it frequently difficult, and sometimes absolutely impossible, to determine exactly what action was taken by the collector. Attached to the papers in the case at bar there is a red-ink memorandum which, though not entirely clear, was probably made by the collector, and from which we learn that the collector determined the additional duty by comparing the entered value of the merchandise per se with the reappraised value of the merchandise per se. This was apparently correct. The law applicable to the case at bar has been twice stated by this board. First in Binney & Smith Co.'s case, G. A. 7595 (T. D. 34726), in which we said, in substance, that, it being the duty of the collector to determine the packing charges, any action by the appraiser relative thereto did not constitute an appraisement, hence the addition of the packing charges does not raise the per se value, and that the provisions of paragraph I did not apply. The same rule was later followed by the board in Bates's case, Abstract 38066.

Following the principle of these two cases, it is the per se value of the merchandise as entered and the per se value of the merchandise as appraised that the collector should use in determining whether or not additional duty should be assessed under paragraph I of section 3. This is apparently what was done in this case. The protest is overruled.

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BEFORE BOARD 1, AUGUST 3, 1916.

**No. 40051.**—Protest 796202 of Thannhauser & Co. (San Francisco).

FISH SOUNDS.

BROWN, *General Appraiser:* The goods in question are fish sounds. They were classified as prepared fish sounds under paragraph 34, act of 1913, and are claimed to be free under paragraph 419 as "fish sounds, crude, dried, or salted for preservation only, and unmanufactured."

The classification was made on a report from the appraiser, made within 30 days of the filing of the protest, wherein the appraiser says:

These fish sounds had been cleaned and dried and therefore were prepared fish sounds.

The statement that they were prepared evidently is a conclusion of law arrived at because they were cleaned and dried.

The importer testified that he saw the merchandise, and the sample which he had consisted of a piece of fish stomach dried and preserved enough to stand shipping, otherwise not preserved, and that it was purchased for the manufacture of glue.

In the case of Hagemeyer & Brunn, G. A. 4811 (T. D. 22620) reported in 3 Treasury Decisions, 951, Judge Fischer, in construing a practically identical provision for "prepared fish bladders or sounds" in the act of 1897, as against an identical provision for "fish sounds, crude, dried, or salted for preservation only" in said act, held that merely drying and cleaning did not make said merchandise fish sounds prepared, but that they were properly classifiable under the free-list provision.

We therefore hold that the facts found by the collector herein adopting the appraisers report, namely, that this article was merely cleaned and dried, did not make the merchandise "prepared," and the protest is sustained.

**No. 40052.**—Protest 788249 of M. J. Corbett & Co. (New York).

CASHMERE OR WOOL SHAWLS.—Shawls classified as cashmere chief value, at 40 per cent ad valorem under paragraph 308, tariff act of 1913, are claimed to be wool chief value, dutiable at 35 per cent under paragraph 291.

Opinion by BROWN, G. A. The shawls were found to be in chief value of the wool of the sheep and held dutiable under paragraph 291, as claimed. Abstract 39673 cited.

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BEFORE BOARD 2, AUGUST 3, 1916.

**No. 40053.**—Protests 742414, etc., of M. Gardner & Co. (New York).

DRAWNWORK.—Towels, doilies, tidies, and other articles composed of flax and ornamented by openwork, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as manufactures of flax at 35 per cent under paragraph 284.

Opinion by COOPER, G. A. Towels with a zigzag pattern, the threads of which have been pushed apart and tied together, making an openwork effect, were held not to be drawnwork, but dutiable under paragraph 284, as claimed. Abstract 38282 followed. The balance of the articles in question were found properly classified under paragraph 358. G. A. 7637 (T. D. 34918), affirmed in Takayama *v.* United States (6 Ct. Cust. Appls., 151; T. D. 35396), followed.

**No. 40054.**—Protest 762078 of John E. Hurst & Co. (Baltimore).

FIGURED COTTON CLOTH.—Cotton cloth classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913, is claimed dutiable as woven figured, under paragraph 252.

Opinion by COOPER, G. A. On the authority of G. A. 7618 (T. D. 34858), affirmed in United States *v.* Sherman (6 Ct. Cust. Appls., 271; T. D. 35501), the cotton cloth in question was held dutiable as woven figured under paragraph 252.

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**No. 40055.**—Protests 764869, etc., of Ely & Walker Dry Goods Co. et al. (St. Louis).

COTTON TABLE DAMASK.—Merchandise classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913, is claimed dutiable as cotton table damask at 25 per cent under paragraph 263.

Opinion by COOPER, G. A. The merchandise in question was held dutiable as cotton table damask under paragraph 263. G. A. 7630 (T. D. 34903) followed.

**No. 40056.**—Protest 789210 of Spokane Dry Goods Co. (Seattle).

FLAX HUCK.—Linen huck classified as manufactures of flax at 35 per cent ad valorem under paragraph 284, tariff act of 1913, is claimed dutiable as plain woven fabric under paragraph 283.

Opinion by COOPER, G. A. In Abstract 35653 (T. D. 34468) huck was held not to be a plain woven fabric. Protest overruled on the authority of that decision.

**No. 40057.**—Protest 786335 of Syndicate Trading Co. (New York).

HANDKERCHIEFS, EMBROIDERED.—Flax and cotton handkerchiefs, hemstitched and embroidered with an initial, and flax or cotton handkerchiefs with borders of lace, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable at 25 or 30 per cent under paragraph 255.

Opinion by COOPER, G. A. The handkerchiefs in question were held properly classified under paragraph 358. G. A. 7663 (T. D. 35063) and G. A. 7768 (T. D. 35654) followed.

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BEFORE BOARD 3, AUGUST 3, 1916.

**No. 40058.**—Protests 787494, etc., of V. Casazza & Bro. et al. (New York).

CHEESE IN BRINE—WEIGHT.—It is claimed that an allowance should be made for shrinkage in weight of cheese in brine.

Opinion by WAITE, G. A. G. A. 7867 (T. D. 36195) followed as to the weight of cheese in brine. Protests sustained in part.

**No. 40059.**—Protests 771549, etc., of Parke, Davis & Co. (Detroit), and protest 797682 of National Aniline & Chemical Co. (New York).

ANISE SEED.—Anise seed classified under the specific provision therefor in paragraph 212, tariff act of 1913, at 2 cents per pound, is claimed entitled to free entry as drugs under paragraph 477.

Opinions by WAITE, G. A. The anise seed in question is used by pharmacists and chemists for manufacturing purposes, and it is what is known as official anise seed, distinguished from star anise seed passed upon in G. A. 7791 (T. D. 35797). It was held properly classified under paragraph 212.

**No. 40060.**—Protest 801729 of William Larzelere & Co. (Philadelphia).

ORCHIDS.—The question here is whether orchids are dutiable under the specific provision therefor in paragraph 210, tariff act of 1913, or free of duty thereunder as mother flowering bulbs.

Opinion by WAITE, G. A. The orchids in question are for a private greenhouse, and there is no evidence that they were imported for propagating purposes. Protest overruled.

**No. 40061.**—Protest 802147 of L. P. Seibold (Baltimore).

CREME DE GRENADINE.—This protest relates to creme de grenadine reported to be a sweetened beverage containing about 23 per cent of alcohol. It was classified under paragraph 240, tariff act of 1913.

Opinion by WAITE, G. A. Protest unsupported; overruled.

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(T. D. 36616.)

*Drawback on nets and netting.*

Drawback on nets and netting manufactured by the American Net & Twine Co., of Boston, Mass., in whole or in part with the use of imported threads, twines, yarns, and cords.—T. D. 28766 of February 14, 1908, revoked.

TREASURY DEPARTMENT, *August 8, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on nets and netting manufactured by the American Net & Twine Co., of Boston, Mass., in whole or in part with the use of imported threads, twines, yarns, and cords.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated July 18, 1916, transmitted herewith, showing, in the case of each lot of nets or netting manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the number, character, dimensions, and weight of the nets or netting produced, the number and size of the meshes, the quantity, value, and identity of each kind of imported thread, twine, yarn, or cord and the quantity of each kind of domestic material appearing in the nets or netting, if any, and the quantity and value of each kind of recoverable waste resulting. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported material appearing in the exported nets or netting, plus the recoverable waste, the allowance for waste to be reduced according to the quantity of imported material which the value thereof will replace.

T. D. 28766 of February 14, 1908, is hereby revoked.

Respectfully, BYRON R. NEWTON,
(52826.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

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(T. D. 36617.)

*Drawback on apricot-kernel oil.*

Drawback on bleached and clarified apricot-kernel oil manufactured by Magnus, Mabee & Reynard (Inc.), of New York, N. Y., from imported expressed oil of apricot kernel.

TREASURY DEPARTMENT, *August 9, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on bleached and clari-

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fied apricot-kernel oil manufactured by Magnus, Mabee & Reynard (Inc.), of New York, N. Y., from imported expressed oil of apricot kernel.

A manufacturing record shall be kept, showing, in the case of each lot of bleached and clarified apricot-kernel oil manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity of bleached and clarified apricot-kernel oil produced, the quantity, value, and identity of imported expressed oil of apricot kernel used in the manufacture thereof, the quantity of waste resulting, and the value of such waste, if any. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported expressed oil of apricot kernel used in the manufacture of the exported bleached and clarified apricot-kernel oil, as shown by the abstract from the manufacturing record, the allowance for waste to be reduced according to the value thereof.

The sworn statement of the manufacturers, dated July 17, 1916, is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on bleached and clarified apricot-kernel oil exported on and after July 22, 1916.

Respectfully, BYRON R. NEWTON,
(103687.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36618.)

*Drawback on gasoline engines.*

**Drawback on gasoline engines manufactured by the Simplex Automobile Co. (Inc.), of New Brunswick, N. J., with the use of imported aluminum castings and carbureters.**

TREASURY DEPARTMENT, *August 9, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on gasoline engines manufactured by the Simplex Automobile Co. (Inc.), of New Brunswick, N. J., with the use of imported aluminum castings and carbureters.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated June 26, 1916, showing, in the case of each gasoline engine manufactured for exportation with benefit of drawback, the serial number thereof, the identity of the castings and carbureter appearing therein, the net weight and value of the castings as imported, the net weight of the

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finished castings as incorporated in the completed gasoline engine, and the net weight and value of the waste resulting. A sworn abstract from such record shall be filed with the drawback entry.

The allowance may equal one imported carbureter and two imported castings for each gasoline engine exported, the allowance for castings to be reduced according to the quantity thereof which the value of the waste will replace.

Drawback may be allowed under these regulations on gasoline engines exported on and after March 22, 1916.

Respectfully, BYRON R. NEWTON,
(104906.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36619.)

*Drawback on chiclets.*

**Drawback on chiclets manufactured by the American Chicle Co., of Philadelphia, Pa., with the use of imported gum chicle and refined sugar produced from imported raw sugar.**

TREASURY DEPARTMENT, *August 8, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on chiclets manufactured by the American Chicle Co., of Philadelphia, Pa., with the use of imported gum chicle and refined sugar produced from imported raw sugar.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated July 14, 1916, transmitted herewith, which will show, in the case of each lot of chiclets manufactured with benefit of drawback, the lot number and date of manufacture thereof, the quantity of chewing gum produced, and the quantities and identity of the refined sugar and imported gum chicle appearing therein. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The quantities of refined sugar and imported gum chicle which may be taken as a basis for the allowance of drawback shall not exceed the quantities appearing in the exported chiclets, as shown by the abstract from the manufacturing record.

Drawback may be allowed under these regulations on chiclets exported on and after June 16, 1916.

Respectfully, BYRON R. NEWTON,
(69717.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

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(T. D. 36620.)

*Metal pencil holders and pencils.*

**Appeal from decision of the Board of United States General Appraisers of June 7, 1916, Abstract 39847, involving the classification of certain metal pencil holders and wooden pencils.**

TREASURY DEPARTMENT, *August 10, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 3d instant, inviting attention to the decision of the Board of United States General Appraisers of June 7, 1916, Abstract 39847, involving the classification of certain metal pencil holders and pencils.

The metal pencil holders had been assessed with duty at the rate of 20 per cent ad valorem under paragraph 167 of the tariff act of October 3, 1913, and the wooden pencils under the provisions of paragraph 378, making pencils of wood dutiable at the rate of 36 cents per gross, but not less than 25 per cent ad valorem, but the board held the articles dutiable as entireties at 20 per cent ad valorem under paragraph 167.

The department hereby approves your action in filing, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, BYRON R. NEWTON,
(104361.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

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(T. D. 36621)

*Drawback on loaded percussion primers.*

**Drawback allowed on loaded percussion primers manufactured by the Western Cartridge Co., of Alton, Ill., with the use of imported parts.**

TREASURY DEPARTMENT, *August 10, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on loaded percussion primers manufactured by the Western Cartridge Co., of Alton, Ill., with the use of imported parts, in accordance with the sworn statement of the said company, dated July 14, 1916, which is transmitted herewith.

A manufacturing record shall be kept, showing, in the case of each lot of loaded percussion primers manufactured for exportation with benefit of drawback, the number and date of manufacture thereof,

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the number of primers produced, the quantity of waste of each kind resulting in the process of manufacture, exclusive of defective imported parts, the value of the imported material, and the value of the waste. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the number and kind of imported parts appearing in the exported loaded percussion primers, as shown by the sworn statement of the manufacturers above referred to, plus an addition to compensate for waste in manufacture, the allowance for such waste to be reduced according to the quantity of imported material of like kind which the value thereof will replace.

Drawback may be allowed under these regulations on the articles covered thereby exported on and after June 27, 1916.

Respectfully, BYRON R. NEWTON,
(27216.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36622.)

*Drawback on pianos and player pianos.*

Drawback on pianos and player pianos manufactured by the Autopiano Co. (Inc.), of New York, N. Y., with the use of imported piano wire and candelabra.—T. D. 30956 of September 30, 1910, revoked.

TREASURY DEPARTMENT, *August 11, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on pianos and player pianos manufactured by the Autopiano Co. (Inc.), of New York, N. Y., with the use of imported piano wire and candelabra.

The allowance shall not exceed the quantities of imported materials appearing in the exported pianos and player pianos, as shown by the sworn statement of the manufacturers, dated June 26, 1916, which is transmitted herewith.

Supplemental sworn schedules showing changes in the quantities or kinds of imported materials appearing in the exported articles may be filed, and upon verification of such sworn schedules drawback may be allowed on pianos and player pianos manufactured in accordance therewith.

T. D. 30956 of September 30, 1910, is hereby revoked.

Respectfully, BYRON R. NEWTON,
(100674-3.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36623.)

*Drawback on pianos and player pianos.*

Drawback on pianos and player pianos manufactured by Kohler & Campbell (Inc.), of New York, N. Y., with the use of imported piano wire and candelabra.—T. D. 30957 of September 30, 1910, revoked.

TREASURY DEPARTMENT, *August 11, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on pianos and player pianos manufactured by Kohler & Campbell (Inc.), of New York, N. Y., with the use of imported piano wire and candelabra.

The allowance shall not exceed the quantity of imported material of each kind appearing in the exported pianos and player pianos, as shown by the sworn statement of the manufacturers, dated June 26, 1916, which is transmitted herewith.

Supplemental sworn schedules showing changes in the quantities or kinds of imported materials appearing in the exported articles may be filed, and upon verification of such supplemental sworn schedules drawback may be allowed on pianos and player pianos manufactured in accordance therewith.

T. D. 30957 of September 30, 1910, is hereby revoked.

Respectfully, BYRON R. NEWTON,
(100674-2.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36624.)

*Drawback on pianos and player pianos.*

Drawback on pianos and player pianos manufactured by the Estey Piano Co., of New York, N. Y., with the use of various imported materials.—T. D. 27657 of October 15, 1906, T. D. 30112 of October 16, 1909, and T. D. 31011 of October 25, 1910, revoked.

TREASURY DEPARTMENT, *August 11, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on pianos and player pianos manufactured by the Estey Piano Co., of New York, N. Y., with the use of imported piano wire, tuning pins, hammer felt, candelabra, and piano actions.

The allowance shall not exceed the quantities of imported materials appearing in the exported pianos and player pianos, as shown by the sworn statement of the manufacturers, dated June 21, 1916, which is transmitted herewith.



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Supplemental sworn schedules showing changes in the quantities or kinds of imported materials appearing in the exported articles may be filed, and upon verification of such sworn schedules drawback may be allowed on pianos and player pianos manufactured in accordance therewith.

T. D. 27657 of October 15, 1906, T. D. 30112 of October 16, 1909, and T. D. 31011 of October 25, 1910, are hereby revoked.

Respectfully, BYRON R. NEWTON,
(41322.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36625.)

*Leave on account of training of National Guard.*

[Circular No 63.]

TREASURY DEPARTMENT, *August 4, 1916.*

*To heads of bureaus and chiefs of divisions,*
*Secretary's Office, Treasury Department:*

Your attention is invited to the provisions of section 80 of the national defense act approved June 3, 1916, as follows:

*Sec. 80. Leaves of absence for certain Government employees.*—All officers and employees of the United States and of the District of Columbia who shall be members of the National Guard shall be entitled to leave of absence from their respective duties, without loss of pay, time, or efficiency rating, on all days during which they shall be engaged in field or coast-defense training ordered or authorized under the provisions of this act.

Under the provisions of section 92 of the said act, it is also prescribed that "each company, troop, battery, and detachment in the National Guard shall * * * participate in encampments, in maneuvers, or other exercises, including outdoor target practice at least fifteen days in training each year."

It has been held that the "field or coast-defense training" referred to in section 80 relates to the participation by companies, troops, batteries, and detachments of the National Guard in encampments, maneuvers, or other exercises, including outdoor target practice, as contemplated in section 92; and in accordance with said holding leaves of absence, in addition to the annual leave otherwise authorized by law, will be allowed all employees of the Treasury Department who are members of the National Guard, whether located in Washington or elsewhere, for such periods as they shall be participating, by proper authority, in such encampments, maneuvers, etc.

W. G. MCADOO,
*Secretary of the Treasury.*

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(T. D. 36626.)

*Common carrier.*

Approving bond of the Inland Navigation Co. (Inc.) for the transportation of merchandise in customs custody.

TREASURY DEPARTMENT, *August 11, 1916.*

SIR: The department is in receipt of your letter of the 3d instant, transmitting an application and bond executed by the Inland Navigation Co. (Inc.) for the transportation of merchandise under sections 3000, 3001, 3005, and 3006 of the Revised Statutes and the act of June 10, 1880, and all the acts relating thereto.

The application and bond are hereby approved, and one copy of the bond is inclosed herewith for the files of your office.

Respectfully, ANDREW J. PETERS,
(105279.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *St. Louis, Mo.*

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(T. D. 36627.)

*Bonded warehouse.*

Authorizing the establishment of bonded warehouses for cleaning, repacking, etc., of imported Mexican pease (garbanzo).

TREASURY DEPARTMENT, *August 12, 1916.*

*To collectors of customs and others concerned:*

An act of Congress, entitled "An act to provide for the storing and cleansing of imported Mexican pease, commonly called 'garbanzo,' "approved June 28, 1916, provides—

That under such regulations and conditions as may be prescribed by the Secretary of the Treasury, bonded warehouses may be established in which imported Mexican pease, commonly called "garbanzo," may be stored, cleaned, repacked, or otherwise changed in condition, but not manufactured, and withdrawn for exportation without the payment of duty thereon: *Provided*, That the whole or any part of such imported garbanzo, and the waste material and by-products incident to cleaning or otherwise treating said imported garbanzo, may be withdrawn for domestic consumption upon the payment on the quantity so withdrawn of the duty imposed by law on such garbanzo in their condition as imported: *And provided further*, That the compensation of customs officers and storekeepers for all services in the supervision of such warehouses shall be paid from moneys advanced by the warehouse proprietor to the collector of customs and be carried in a special account and disbursed for such purposes, and all expenses incurred shall be paid by the warehouse proprietor.

Said warehouse shall be designated as class 8.

The bonding and operation of such warehouses shall be in accordance with the provisions of articles 710 to 731, 742 to 746, and 747 to 773, inclusive, of the Customs Regulations of 1915, so far as applicable.

Mexican pease, commonly called "garbanzo," only may be taken into the bonded premises for storing, cleaning, repacking, or other-

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wise changing of their condition, but not manufactured, and withdrawn for exportation from the United States without the payment of duties thereon. The whole or any part of the imported garbanzo, and the waste material and by-products incident to cleaning or otherwise treating the merchandise may be withdrawn for domestic consumption upon the payment on the quantity so withdrawn of the duty imposed by law on the garbanzo in their condition as imported.

The proprietor of the bonded premises will be required to pay monthly in advance to the collector of customs the compensation fixed for the storekeeper in charge of the premises, which will be carried by the collector in a special account and disbursed for such purposes, and to pay any other expense incurred by the customs officers in the supervision or operation of the premises.

(93000–13.) ANDREW J. PETERS, *Assistant Secretary.*

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(T. D. 36628.)

*Mail importations—Parcel-post convention with China.*

TREASURY DEPARTMENT, *August 12, 1916.*

*To collectors of customs and others concerned:*

The department is advised of the conclusion of a parcel-post convention between the United States and China, which became effective August 1, 1916.

The provisions of chapter 6 of the Customs Regulations of 1915 are applicable to this convention.

The limit in weight of parcels received thereunder is 11 pounds. Parcels must not exceed the following dimensions: Greatest length in any direction, 3 feet 6 inches; greatest length and girth combined, 6 feet; or, in the case of parcels for or from nonsteam-served places in China, 1 cubic foot in volume. Parcels must be so wrapped or inclosed as to permit their contents to be easily examined.

(60935.) ANDREW J. PETERS, *Assistant Secretary.*

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*Abstracts of decisions of the Board of General Appraisers.*

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*Board 1*—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

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BEFORE BOARD 2, AUGUST 8, 1916.

**No. 40062.**—Protest 790140 of Mesta Machine Co. (New York).

CRANK SHAFT—ENTIRETIES.

FISCHER, *General Appraiser:* This is an importation of a large steel crank shaft imported in a knocked-down condition. It consists of two comparatively short shafts

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which are intended to be coupled together with a centering plate by the use of bolts and nuts. The centering plate, bolts, and nuts came with the two shafts, and the whole was treated by the collector as an entirety and duty levied thereon at the rate of 20 per cent ad valorem under the general provision in paragraph 167 of the act of 1913 for manufactures of metal not specially provided for. The importers claim that the bolts and nuts should have been separated from the other parts and held dutiable at the rate of 10 per cent ad valorem under the provision in paragraph 123 of said act for bolts of iron or steel, with or without nuts.

It is practically conceded by the importers that all of the parts, including the bolts and nuts, are absolutely essential to the proper assembling of the complete crank shaft, and inasmuch as all of such parts were brought in in the same shipment we can see no reason why the bolts and nuts should be treated independently and classified as separate dutiable entities. The proof conclusively shows the importation to consist of a finished manufacture of metal with all the parts imported in the same shipment, and as such it is an entirety within the meaning of the law.

A case directly in point is that of Jackson *v.* United States (2 Ct. Cust. Appls., 475; T. D. 32227), which involved the question of the tariff classification of certain cast-iron linings for mantels and fireplaces. These, the importers claimed, were properly classifiable as cast-iron plates advanced in condition. The court affirmed the ruling of this board holding the importation to constitute an entirety, and said:

> The fact that these linings as imported are not assembled into the form of their ultimate use does not deprive them of their character of entireties, and neither does it require that the parts into which the entirety has been temporarily resolved should be considered for tariff purposes as separate entities. "Knocked down" or assembled, the castings, which were imported together, constituted mantel and fireplace linings, and for nothing else were they commercially fit or available. They were, therefore, in our opinion, dutiable as entireties under the well-settled rule laid down by the courts.

The protest is overruled and the decision of the collector affirmed.

**No. 40063.**—Protest 803525 of John H. Faunce (Philadelphia).

Platinum-Rhodium Wire.—Wire composed of platinum and rhodium, classified as wire not specially provided for, at 15 per cent ad valorem, under paragraph 114, tariff act of 1913, is claimed free of duty under paragraph 578.

Opinion by Fischer, G. A. On the authority of Abstract 39865 the wire in question was held properly classified under paragraph 114.

**No. 40064.**—Protest 793537 of Hipp, Didisheim & Bro. (New York).

Timers.—Articles designed for timing horse races and other speed contests and for use by physicians in timing the heart and pulse beats, classified as watches at 30 per cent ad valorem under paragraph 161, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by Fischer, G. A. Certain of the articles were found to consist of timers and held dutiable under paragraph 167. G. A. 7730 (T. D. 35460) followed.

**No. 40065.**—Protests 762557, etc., of E. Jacob & Co. (New York).

Silk Mourning Crapes.—Goods classified as silk veilings or trimmings at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as woven silk fabrics at 45 per cent under paragraph 318.

Opinion by Howell, G. A. The goods were found to consist of silk mourning crapes measuring 38 to 41 inches in width. They were held dutiable at 45 per cent under paragraph 318. Auffmordt *v.* United States (7 Ct. Cust. Appls., —; T. D. 36320) followed.

**No. 40066.**—Protest 770656 of Kronfeld, Saunders & Co. (New York).

Wearing Apparel in Part of Braids.—Articles of wearing apparel classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable according to the component material of chief value.

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Opinion by HOWELL, G. A. On the authority of G. A. 7613 (T. D. 34823), affirmed in United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388), certain of the goods were held dutiable as silk wearing apparel at 50 per cent under paragraph 317 and the remaining articles as wool wearing apparel at 35 per cent under paragraph 291.

**No. 40067.**—Protest 795723 of Scruggs-Vandervoort-Barney Dry Goods Co. (St. Louis).

BEADED TRIMMINGS.—Trimmings classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as articles composed in chief value of beads at 50 per cent under paragraph 333.

Opinion by HOWELL, G. A. It was found that the trimmings in question are composed chiefly of beads or spangles. They were held dutiable under paragraph 333. Willenborg *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464) followed.

**No. 40068.**—Protest 796253 of Hewlett Robin Co. (New York).

TRIMMINGS AND ORNAMENTS, BEADED.—Articles returned by the appraiser as metal millinery ornaments, classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, and trimmings or ornaments of yarns, threads, or filaments, classified at the same rate under paragraph 358, are claimed dutiable as articles composed in chief value of beads or spangles at 50 per cent under paragraph 333.

Opinion by HOWELL, G. A. The articles found to be composed chiefly of beads or spangles were held dutiable under paragraph 333, as claimed. Willenborg *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464) followed.

**No. 40069.**—Protest 796255 of American & European Forwarding Co. (New York).

SILK CURTAINS.—This protest relates to merchandise returned by the appraiser as curtains composed in chief value of silk and made in part of trimmings. They were classified at 60 per cent ad valorem under paragraph 358.

Opinion by HOWELL, G. A. On the authority of Abstract 37624, affirmed in Morimura Bros. *v.* United States (6 Ct. Cust. Appls., 475; T. D. 36119), the curtains in question were held properly classified under paragraph 358.

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BEFORE BOARD 3, AUGUST 8, 1916.

**No. 40070.**—Protest 791466 of Hirsh & Schofield (New York).

MALT EXTRACT IN DRUMS.—The merchandise here in question is malt extract put up in drums.

Opinion by WAITE, G. A. On the authority of United States *v.* Britt (7 Ct. Cust. Appls., —; T. D. 36389) the malt extract in drums containing 10 English gallons was held dutiable at 23 cents per gallon under paragraph 246, tariff act of 1913.

**No. 40071.**—Protest 799379 of Independent Gum Co. (Memphis).

TARE ON CHICLE—AFFIDAVITS.

HAY, *General Appraiser*: The papers forwarded in this case are both informal and irregular. It is difficult to determine the nature of the complaint, as the protest is not in any sense formal and the collector fails to make a report on the same that is at all illuminating. Apparently the protestants claim that there should have been a greater amount of tare allowed on certain chicle imported by them.

The case was set for hearing at the port of New York on April 17, and the protestants duly notified. The collector forwarded with the protest three affidavits that had been filed with him by the protestants. The protestants had been prior to the date of hearing of the case notified by the chief clerk of this board that the case could not be heard and decided upon affidavits, but at the time of the hearing no one appeared for the protestants, and the case was submitted, the Assistant Attorney General objecting to the consideration of the affidavits and moving to exclude them.

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Cases before this board are not tried upon affidavits. Ordinarily the board, if so requested, would set a case for hearing where it is most convenient for the protestant, and if the testimony of witnesses at a distance remote from the place of hearing is to be had, it must be had by deposition under the rules of the board. The motion of the Assistant Attorney General to exclude the affidavits is sustained.

The case therefore being before us without legal evidence of any kind, the protest is overruled.

**No. 40072.**—Protest 797879 of Wilfred Schade Forwarding Co. (St. Louis).

CLERICAL ERROR.—The importer claims here that through clerical error he neglected to deduct certain items of freight.

Opinion by HAY, G. A. Protest overruled. United States *v.* Swedish Produce Co. (4 Ct. Cust. Appls., 223; T. D. 33437) and United States *v.* Wyman (4 Ct. Cust. Appls., 264; T. D. 33485) cited.

**No. 40073.**—Protest 798411 of Robert J. Caldwell (Buffalo).

PERSONAL EFFECTS.—Woolen cloth brought into this country by a citizen of the United States returning from Canada, classified under paragraph 288, tariff act of 1913, is claimed entitled to free entry as personal effects under paragraph 642.

Opinion by HAY, G. A. The protest, which was submitted without evidence, was overruled, as facts stated in a protest are not taken to be true unless established by competent testimony.

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BEFORE BOARD 2, AUGUST 10, 1916.

**No. 40074.**—Protest 801103 of Tamm & Co. (New York).

SURFACE-COATED PAPER SUITABLE FOR COVERING BOXES.—The merchandise in question consists of paper, one side of which shows mottled effects in various colors. It was classified at 40 per cent ad valorem under paragraph 324, tariff act of 1913, as "papers with coated surface or surfaces suitable for covering boxes." Various claims are made at lower rates.

Opinion by FISCHER, G. A. The importers failed to prove that the coloring matter appearing on the surface of the paper was not in fact a coating. Protest overruled.

**No. 40075.**—Protests 787278, etc., of Hensel, Bruckmann & Lorbacher (New York).

PAPER WITH WHITE COATED SURFACE, CALENDER PLATE FINISHED.—Merchandise invoiced as "white blocking paper," classified as "all other paper with coated surface or surfaces not specially provided for," at 35 per cent ad valorem under paragraph 324, tariff act of 1913, is claimed dutiable at 25 per cent under the same paragraph as "papers with white coated surface or surfaces, calender plate finished."

Opinion by FISCHER, G. A. It was found that the paper in question is a calender plate finished paper within the meaning of the descriptive provision therefor in paragraph 324. Protests sustained in part.

**No. 40076.**—Protest 800898 of John V. Carr (Detroit).

OILERS—PARTS OF AUTOMOBILES.—Oilers composed of metal and used as parts of automobiles were classified as "finished parts of automobiles" at 30 per cent ad valorem under paragraph 119, tariff act of 1913. They are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by FISCHER, G. A. It was found that these articles are used on automobiles to cover the oil holes which lead to the bearings, and are intended to keep the holes free from dirt, dust, etc. They were therefore held properly classified under paragraph 119.

**No. 40077.**—Protest 793415 of H. Nordlinger & Sons (Los Angeles).

BRONZE BOXES.—Merchandise invoiced as "real bronze boxes ivory miniatures," classified as articles plated with gold or silver at 50 per cent ad valorem under para-

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graph 167, tariff act of 1913, is claimed dutiable under the same paragraph as not plated.

Opinion by FISCHER, G. A. The articles were found not to be gold plated and were held dutiable at 20 per cent under paragraph 167, as claimed.

**No. 40078.**—Protests 800297, etc., of Wells, Fargo & Co. et al. (New York).

SILK WEARING APPAREL IN PART OF NETTING.—These protests are against the classification of articles of wearing apparel at 60 per cent ad valorem under paragraph 358, tariff act of 1913.

Opinion by HOWELL, G. A. From an examination of the special reports of the appraiser it was found that certain of the merchandise consists of articles of wearing apparel composed wholly or in chief value of silk and made wholly or in part of netting. These goods were held dutiable as silk wearing apparel at 50 per cent under paragraph 317. Protests sustained in part. United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388) followed.

**No. 40079.**—Protest 800592 of Stewart Hees Co. (New York).

TRIMMINGS AND ORNAMENTS.—Merchandise returned by the appraiser as trimmings or ornaments, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, is claimed dutiable as articles composed in chief value of beads or spangles, at 50 per cent under paragraph 333.

Opinion by HOWELL, G A. Certain of the articles were found to be composed in chief value of beads. Protest sustained as to these articles. Willenborg *v.* United States (6 Ct. Cust Appls., 209; T. D. 35464) cited.

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BEFORE BOARD 3, AUGUST 10, 1916.

**No. 40080.**—Protest 800672 of Chas. E. Heymann (New York).

SHORTAGE OF FEATHERS.—This protest is against the assessment of duty upon 20 pounds of feathers which the importer claims were short shipped.

Opinion by HAY, G. A. It was found that there was a shortage of 20 pounds in the shipment. Protest sustained.

**No. 40081.**—Protest 800674 of Max Frankel Co. (New York).

CLERICAL ERROR.—The protestant in this case claims that through clerical error a discount of 5 per cent was twice deducted upon entry, subjecting the importer to the payment of additional duty. Upon entry the importer advanced each item to make market value, and from this total deducted a trade discount of 5 per cent, together with other nondutiable items.

Opinion by HAY, G. A. No clerical error being manifest, the protest was overruled. United States *v.* Swedish Produce Co. (4 Ct. Cust. Appls., 223; T. D. 33437), United States *v.* Wyman (4 Ct. Cust. Appls., 264; T. D. 33485), and G. A. 7476 (T. D. 33590) cited.

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## (T. D. 36629.)

### *Conference of customs officers*

The conference of customs officers to be held at the New York customhouse on November 20–25, 1916.

TREASURY DEPARTMENT, *August 14, 1916.*

*To collectors and other officers of the customs:*

The annual conference of customs officers will be held at the port of New York November 20–25, 1916. Each district will be repre-

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sented at the conference by the collector or by a representative designated by him for that purpose. Each of the appraisers at the ports of New York, Boston, Philadelphia, Baltimore, New Orleans, Chicago, San Francisco, Portland (Me.), Buffalo, Detroit, Cleveland, Cincinnati, Pittsburgh, St. Louis, Portland (Oreg.), Tampa, and Seattle will attend the conference or designate a representative for that purpose. The surveyor and the naval officer at each naval office port will attend or be represented by a specially designated officer of their respective offices. Special or customs agents who are to be present will be hereafter designated by the department.

It is desired that questions to be discussed at the conference be separately submitted to the department immediately by the collectors, appraisers, naval officers, surveyors, and special or customs agents in charge. The department will then select the questions for discussion and will transmit copies to the various customs officers as soon as practicable, so that there may be ample time for the consideration of the same prior to the opening of the conference.

The conference will open at the New York customhouse on November 20, 1916, at 10 a. m. Customs officers will advise the department prior to November 1, 1916, of the names of the persons who will attend the conference.

Members of the efficiency board will meet in New York on November 13, 1916, and will also attend the conference. It is desired that each district be represented by an officer other than a member of the efficiency board.

The actual and necessary traveling expenses of the officers attending the conference will be paid from the appropriation "Collecting the revenue from customs, 1917."

(100064–3.) ANDREW J. PETERS, *Assistant Secretary.*

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(T. D. 36630.)

*Pencils.*

Appeal directed from decision of the Board of United States General Appraisers of June 26, 1916, G. A. 7928 (T. D. 36538), involving the classification of certain pencils.

TREASURY DEPARTMENT, *August 16, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 10th instant, inviting attention to the decision of the Board of United States General Appraisers of June 26, 1916, G. A. 7928 (T. D. 36538), involving the classification of certain pencils composed of cedar, metal, and lead or crayon.

The articles, it appears, were in chief value of metal and valued at above 20 cents per dozen pieces. They had been assessed with

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duty at the rate of 60 per cent ad valorem under the provisions of paragraph 356 of the tariff act of October 3, 1913, for "articles valued above 20 cents per dozen pieces designed to be worn on apparel or carried on or about or attached to the person, * * * composed of metal," but were held by the board to be dutiable as a manufacture in chief value of metal under paragraph 167 of the said act.

You are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(93783.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

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(T. D. 36631.)

*Drawback on maple sirup.*

Drawback on maple sirup manufactured by Joseph M. McCaul & Son, of New York, N. Y., with the use of refined sugar produced in whole or in part from imported raw sugar.

TREASURY DEPARTMENT, *August 16, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on maple sirup manufactured by Joseph M. McCaul & Son, of New York, N. Y., with the use of refined sugar produced in whole or in part from imported raw sugar.

The quantity of refined sugar which may be taken as a basis for the allowance of drawback shall not exceed the quantity appearing in the exported maple sirup, as shown by the sworn statement of the manufacturers, dated June 28, 1915, which is transmitted herewith.

Supplemental sworn schedules showing changes in the quantity of refined sugar used, or showing the use of imported maple sugar, in the manufacture of maple sirup, may be filed, and upon verification of such supplemental schedules drawback may be allowed on maple sirup manufactured in accordance therewith.

Respectfully, ANDREW J. PETERS,
(105291.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36632.)

*Drawback on Chorizos sausages.*

**Drawback on Chorizos sausages manufactured by Armour & Co., of Chicago, Ill., with the use of imported ground Spanish red pepper.—T. D. 27312 of April 26, 1906, and T. D. 27336 of May 10, 1906, revoked.**

TREASURY DEPARTMENT, *August 16, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on Chorizos sausages manufactured by Armour & Co., of Chicago, Ill., with the use of imported ground Spanish red pepper at the factories of the said company located at Chicago, Ill., and Kansas City, Mo.

Records of operations shall be kept in the manner described in the sworn statement of the manufacturers, dated June 23, 1916, transmitted herewith, and at the end of each season, which shall not exceed one year in duration, an abstract from such records shall be filed at your port showing the total number of pounds of green Chorizos sausages produced during the season, the total number of pounds of smoked and dried Chorizos sausages obtained therefrom, and the quantity of imported Spanish red pepper used in the manufacture thereof.

The allowance shall not exceed the quantity of imported ground Spanish red pepper used in the manufacture of the exported Chorizos sausages, as shown by the abstract from the manufacturing records.

T. D. 27312 of April 26, 1906, and T. D. 27336 of May 10, 1906, are hereby revoked.

Respectfully, ANDREW J. PETERS,
(35783.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36633.)

*Immediate transportation port.*

**Noyes, Minn., created an immediate transportation port under the act of 1880.**

TREASURY DEPARTMENT, *August 17, 1916.*

*To officers of the customs and others:*

The appended act of Congress, approved August 7, 1916, is published for the information and guidance of all concerned.

(90740-35.) ANDREW J. PETERS, *Assistant Secretary.*

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**An act for the establishment of Noyes, in the State of Minnesota, as a port of entry and delivery for immediate transportation without appraisement of dutiable merchandise.**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the privileges of the first and seventh sections of the act

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approved June tenth, eighteen hundred and eighty, governing the immediate transportation of dutiable merchandise without appraisement be, and are hereby, extended to the port of Noyes, in the State of Minnesota.

Approved, August 7, 1916.

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(T. D. 36634.)

*C. V. R. reports.*

C. V. R. reports to be forwarded direct without submission through the respective headquarters ports.

TREASURY DEPARTMENT, *August 17, 1916.*

*To collectors and other officers of the customs:*

The department is in receipt of a letter from the appraiser of merchandise at New York, dated the 10th instant, suggesting that in future all ports now reporting and receiving C. V. R. matter through their headquarters ports discontinue this practice and communicate directly with the C. V. R. bureau at New York, and that the appraiser be given corresponding authority to transmit all C. V. R. matter to each port directly without forwarding through headquarters ports, as at present.

The appraiser states that such procedure will greatly facilitate the dissemination of valuable information and the compilation of statistical data obtained from the various ports. Under this arrangement the headquarters ports will be in just as close touch with the other ports in their respective districts as at present, and such ports will receive no information that the headquarters port does not receive.

The department approves the appraiser's suggestion that C. V. R. matter be received and forwarded to interested ports without requiring the forwarding thereof through the respective headquarters ports.

You will be governed accordingly.

(89160.) ANDREW J. PETERS, *Assistant Secretary.*

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(T. D. 36635.)

*Tomato products.*

TREASURY DEPARTMENT, *August 18, 1916.*

*To collectors and other officers of the customs:*

Under date of July 11, 1916 (T. D. 36559), a copy of a letter received from the Secretary of Agriculture was published relative to the tests applied in determining whether tomato products are adulterated within the meaning of the Federal food and drugs act.

It was erroneously stated in the first paragraph that section 2 of the act covered these cases.

This section should have been cited as section 11.

(95500.) ANDREW J. PETERS, *Assistant Secretary.*

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(T. D. 36636.)

*Drawback on smoking tobacco.*

Drawback allowed on smoking tobacco manufactured by the Falk Tobacco Co., of Richmond, Va., with the use of imported Turkish tobacco.

TREASURY DEPARTMENT, *August 18, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on the brands of smoking tobacco designated as "Herbert Tareyton" and "Barking Dog," manufactured by the Falk Tobacco Co., of Richmond, Va., with the use of imported Turkish tobacco.

A manufacturing record shall be kept, which will show, in addition to the usual import data, the lot number and date of manufacture of each lot of smoking tobacco manufactured for exportation with benefit of drawback, the quantity of Turkish tobacco used, the quantity of moisture and flavorings added, the quantity and kind of smoking tobacco produced, the number of boxes of each size packed, and the net weight of the smoking tobacco packed therein. A sworn abstract from such manufacturing record shall be filed with each drawback entry.

The allowance shall not exceed the quantity of imported leaf tobacco appearing in the exported smoking tobacco, as shown by the abstract of the manufacturing record.

The sworn statement of the manufacturers, dated August 9, 1916, is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on tobacco exported on and after April 19, 1916.

Respectfully, ANDREW J. PETERS,
(101752-1.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Norfolk, Va.*

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(T. D. 36637.)

*Drawback on cocktails.*

Drawback on cocktails manufactured by the S. C. Herbst Importing Co., of Milwaukee, Wis., with the use of imported gin, whisky, cordials, liqueurs, bitters, and vermouth.

TREASURY DEPARTMENT, *August 19, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on cocktails designated as "Manhattan," "whisky," "vermouth," "Scotch," "Martini," "gin," and "Bronx," "Chancellor brand," manufactured by

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the S. C. Herbst Importing Co., of Milwaukee, Wis., with the use of imported gin, whisky, cordials, liqueurs, bitters, and vermouth.

The company shall keep a record covering each lot of cocktails exported, showing, in the case of each kind of cocktail, the number of bottles of each size contained in the shipment and the actual quantity of cocktails appearing therein. A sworn abstract from such record shall be filed with the drawback claim.

The allowance shall not exceed the quantities of imported materials appearing in the exported cocktails, as shown by the sworn statement of the manufacturers, dated July 14, 1916, which is transmitted herewith.

Supplemental sworn schedules covering changes in the formulas, other kinds of cocktails, or the use of other kinds of imported materials, may be filed and, upon verification of such schedules, drawback may be allowed on the cocktails covered thereby.

T. D. 29585 of March 1, 1909, is hereby revoked.

Respectfully, ANDREW J. PETERS,
(62645.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Milwaukee, Wis.*

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(T. D. 36638.)

*Duty on cases.*

Appeal directed from decision of the Board of United States General Appraisers of July 7, 1916, G. A. 7935 (T. D. 36558), involving the assessment of duty on certain balsam of copaiba.

TREASURY DEPARTMENT, *August 21, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 9th instant, inviting attention to the decision of the Board of United States General Appraisers of July 7, 1916, G. A. 7935 (T. D. 36558), involving the assessment of duty on certain balsam of copaiba.

Duty had been assessed on the merchandise on a value based on the gross weight of the merchandise at the appraised unit value, but the board held that it should have been based on the net weight at the appraised unit value plus the value of the cartons, cases, etc., although it appears that the merchandise was dealt in and invoiced and appraised in a packed condition, and that the invoice unit value and the appraised unit value, respectively, pertained to the merchandise in such packed condition, the invoice value being extended at the unit value thereof, computed on the gross weight of the merchandise.

You are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Cus-

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toms Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(105294.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

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## *Abstracts of decisions of the Board of General Appraisers.*

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*Board 1*—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

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BEFORE BOARD 2, AUGUST 17, 1916.

**No. 40082.**—Protests 769311, etc., of H. Jacquin & Co. (New York).

KNITTED UNDERWEAR.—Knitted underwear classified as silk wearing apparel at 50 per cent ad valorem under paragraph 317, tariff act of 1913, is claimed to be composed in chief value of wool, dutiable at 35 per cent under paragraph 291.

Opinion by HOWELL, G. A. The importers not having shown by competent proof that the underwear in question is not composed in chief value of silk, protests overruled.

**No. 40083.**—Protest 781750 of R. H. Macy & Co. (New York).

COTTON VELVET COUCH COVERS—TURKISH TOWELS.—Cotton velvet couch covers and Turkish towels classified as articles of pile fabrics under paragraph 257, tariff act of 1913, are claimed dutiable as Jacquard figured upholstery goods at 35 per cent under paragraph 258 and as cotton towels at 25 per cent under paragraph 264.

Opinion by COOPER, G. A. On the authority of Downing *v.* United States (6 Ct. Cust. Appls., 447; T. D. 35984), the couch covers in question were held dutiable under paragraph 258. The Turkish towels were held dutiable under paragraph 264. G. A. 7656 (T. D. 35019) followed.

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BEFORE BOARD 3, AUGUST 17, 1916.

**No. 40084.**—Protest 792040 of Adolph Gittler (New York).

WEARING APPAREL ENTERED UNDER BOND FOR EXPORTATION.

HAY, *General Appraiser:* This is a protest against the assessment of duty under paragraph 358 on a certain garment imported under the provisions of subsection 4, paragraph J of section 4, tariff act of 1913. The record shows that it is an article for which free entry is provided in that paragraph; that the bond for its exportation was duly given, and that the article in question was duly exported within the period fixed by law. The collector states that he assessed duty upon the garment because the tag and seal placed upon it in compliance with instructions to customs officers in T. D. 33806 and T. D. 34374 had apparently been broken. The record, however, including the testimony of the examiner of merchandise who placed the seal or tag upon the garment, and who examined it upon exportation, we think makes it perfectly clear that every requirement of the paragraph to entitle the protestant to free entry of the garment has been complied with. It has never entered into the commerce of the United States but was only used as a model and was exported within the period

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fixed by the statute. The protest is sustained as to the claim under subsection 4 of paragraph J, and the collector will reliquidate the entry granting free entry to the article in question.

The protest also makes some claim as to the conversion of currency, but this was apparently abandoned at the hearing as was also the claim in the protest for 5 per cent discount on account of American bottoms. As to these claims the protest is overruled.

**No. 40085.**—Protest 798122 of Levor & Igstaedter (New York).

SHORTAGE.

HAY, *General Appraiser:* This is a protest against the assessment of duty on certain goods, the importer claiming that, due to a shortage in the shipment duty was assessed upon too great a quantity. The record shows that the case in which the shortage is claimed was never examined by a Government officer. At the hearing testimony was introduced to show the amount of the shortage.

The Government should not collect tariff duties upon merchandise not imported—the citizen should not be required to pay duties that are not strictly due from him under the law—but where duty is assessed upon merchandise, and it is claimed that the merchandise was short shipped, and not examined in the presence of a Government officer, the Government is placed at a decided disadvantage, and before such a claim should be allowed there should be clear and convincing proof. (Sears, Roebuck & Co.'s case, Abstract 38931.)

But one witness was called in this case, who was the clerk in whose presence the packing cases were opened and the merchandise removed. He swears quite definitely that there was a shortage as follows: 62¼ yards of No. 330, 60¼ yards of No. 334, and 125¾ yards of No. 320.

There is nothing in the record that discredits this testimony. The protest is sustained and the collector directed to reliquidate the entry accordingly.

**No. 40086.**—Protest 801128 of F. W. Myers & Co. (Ogdensburg).

AMERICAN GOODS RETURNED.—Printed jute bags classified under paragraph 284, tariff act of 1913, are claimed free of duty as American goods returned, under paragraph 404, or dutiable at 10 per cent under paragraph 281 as plain woven fabrics.

Opinion by HAY, G. A. The regulations not having been complied with, and no proof having been offered, protest overruled.

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## (T. D. 36639.)

### *Drawback on Chorizos sausages.*

T. D. 36632 of August 16, 1916, extended to cover Chorizos sausages manufactured by Morris & Co., of Chicago, Ill., with the use of imported ground Spanish red pepper.

TREASURY DEPARTMENT, *August 22, 1916.*

SIR: The department's regulations of August 16, 1916 (T. D. 36632), providing for the allowance of drawback on Chorizos sausages manufactured by Armour & Co., of Chicago, Ill., with the use of imported ground Spanish red pepper, are hereby extended to provide for the payment of drawback on Chorizos sausages manufactured by Morris & Co., of Chicago, Ill., at the plant of the company at Chicago, Ill., or at St. Joseph, Mo., Kansas City, Kans., East St. Louis, Ill., Oklahoma City, Okla., and South Omaha, Nebr., with the use of imported ground Spanish red pepper.

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The sworn statements of the manufacturers, dated June 10 and July 18, 1916, are transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(35783.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Chicago, Ill.*

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(T. D. 36640.)

*Drawback on bags discontinued.*

**No drawback will be allowed on bags manufactured by the Central Bag Manufacturing Co. or Herman Reach & Co., of Chicago, Ill., with the use of imported burlap.**

TREASURY DEPARTMENT, *August 22, 1916.*

SIR: In view of the report and recommendations of the special agent at your port that the Central Bag Manufacturing Co., successors of Herman Reach & Co., is no longer interested in the regulations allowing drawback on bags manufactured from imported burlap, no drawback will hereafter be allowed on bags manufactured by the Central Bag Manufacturing Co. or Herman Reach & Co. after May 31, 1914.

A copy of a statement from the Central Bag Manufacturing Co. and of the special agent's report in the matter are inclosed herewith.

Respectfully, ANDREW J. PETERS,
(102789.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Chicago, Ill.*

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(T. D. 36641.)

*Drawback on confectionery.*

**Drawback allowed on confectionery manufactured by the Chocolate Products Co., of Baltimore, Md., with the use of refined sugar produced from imported raw sugar.**

TREASURY DEPARTMENT, *August 23, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on confectionery manufactured by the Chocolate Products Co., of Baltimore, Md., with the use of refined sugar produced from imported raw sugar.

A manufacturing record shall be kept in accordance with the sworn statement of the manufacturers, dated July 28, 1916, which is transmitted herewith, which will show, in the case of each lot of confectionery manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity and identity of refined sugar used, and the quantity and kind of confec-



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tionery produced. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The quantity of refined sugar which may be taken as a basis for the allowance of drawback may equal the quantity used in the manufacture of the exported confectionery, with a maximum of the quantity shown in the sworn statement of the manufacturers.

Drawback may be allowed under these regulations on confectionery exported on and after May 1, 1916.

Respectfully, ANDREW J. PETERS,
(100732-7.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Baltimore, Md.*

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(T. D. 36642.)

*Drawback on white lead in water and white lead in oil.*

T. D. 32516 of May 18, 1912, and T. D. 32701 of July 11, 1912, extended to cover white lead in water and white lead in oil manufactured by the United Lead Co., of New York, N. Y.—T. D. 23294 of October 1, 1901, T. D. 28610 of December 13, 1907, T. D. 29284 of October 2, 1908, T. D. 30562 of April 22, 1910, and T. D. 30700 of June 17, 1910, revoked.

TREASURY DEPARTMENT, *August 23, 1916.*

SIR: The department's regulations of May 18, 1912 (T. D. 32516) and July 11, 1912 (T. D. 32701), providing for drawback on dry white lead manufactured by the United Lead Co., of New York, N. Y., with the use of imported pig lead or pig lead produced from imported bullion or lead-bearing ores, are hereby extended to cover white lead in water and also white lead in oil manufactured with the use of the above named materials in combination with domestic or imported linseed oil or linseed oil produced from imported flaxseed.

The manufacturing records shall show, in addition to the data called for in T. D. 32516, the oil or water content of the exported white lead, and in liquidation the quantities of materials which may be taken as a basis for the payment of drawback may equal that provided in T. D. 32516, and, in the case of white lead in oil, the quantity of oil appearing in the exported product, as shown by the abstract from the manufacturing record.

The sworn statement of the manufacturers, dated June 28, 1916, is transmitted herewith for filing in your office.

T. D. 23294 of October 1, 1901, T. D. 28610 of December 13, 1907, T. D. 29284 of October 2, 1908, T. D. 30562 of April 22, 1910, and T. D. 30700 of June 17, 1910, are hereby revoked.

Respectfully, ANDREW J. PETERS,
(81031.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36643.)

*Common carrier.*

**Approving bond of the Great Lakes Transit Corporation for the transportation of merchandise in customs custody and lading and unlading under the act of February 13, 1911.**

TREASURY DEPARTMENT, *August 23, 1916.*

SIR: The department is in receipt of your letter of the 15th instant, transmitting a bond, executed by the Great Lakes Transit Corporation, to bond for the transportation of merchandise under the provisions of sections 3000, 3001, 3005, and 3006 of the Revised Statutes, the act of June 10, 1880, and all acts relating thereto, and for the lading or unlading of merchandise under the act of February 13, 1911.

Said bond is approved, and one copy thereof is transmitted herewith for the files of your office.

Respectfully, ANDREW J. PETERS,
(105109.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Buffalo, N. Y.*

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(T. D. 36644.)

*Drawback on cigarette tips.*

**Drawback on cigarette tips manufactured by Salvadore Ragona, of New York, N. Y., with the use of imported cork paper.—T. D. 30093 of November 4, 1909, revoked.**

TREASURY DEPARTMENT, *August 25, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on cigarette tips manufactured by Salvadore Ragona, of New York, N. Y., with the use of imported cork paper.

The allowance shall not exceed the quantity of imported cork paper used in the manufacture of the exported cigarette tips, as shown by the sworn statement or schedule of the manufacturer, dated August 16, 1916, which is transmitted herewith.

Supplemental sworn schedules may be filed, and upon verification of the same drawback may be allowed on cigarette tips manufactured in accordance therewith.

T. D. 30093 of November 4, 1909, is hereby revoked.

Respectfully, ANDREW J. PETERS,
(69827.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36645.)

*Drawback on furs, etc.*

T. D. 36132 of February 1, 1916, extended to cover furs and parts of furs dyed for the account of Eisenbach Bros. & Co., of New York, N. Y., by Herman Basch & Co., of Brooklyn, N. Y., Alaska Chemical Co., of Jersey City Heights, N. J., M. Bowsky Fur Dressing & Dyeing Co., of New York, N. Y., and Schiff Bros., of Brooklyn, N. Y.—T. D. 26907 of December 14, 1905, revoked.

TREASURY DEPARTMENT, *August 25, 1916.*

SIR: The department's regulations of February 1, 1916 (T. D. 36132), providing for drawback on imported fur skins, plates, heads, tails, and other parts of fur skins exported after having been dyed, redyed, etc., by H. A. Bindseil & Son, of Long Island City, N. Y., are hereby extended to cover similar imported articles exported after having been dyed for the account of Eisenbach Bros. & Co., of New York, N. Y., by the Alaska Chemical Co., of Jersey City Heights, N. J., the M. Bowsky Fur Dressing & Dyeing Co., of New York, N. Y., Schiff Bros., of Brooklyn, N. Y., or Herman Basch & Co., of Brooklyn, N. Y.

The sworn statements of Eisenbach Bros. & Co., Herman Basch & Co., Schiff Bros., the M. Bowsky Fur Dressing & Dyeing Co., and the Alaska Chemical Co., dated April 19, July 19 and 25, and August 2 and 10, 1916, respectively, are transmitted herewith.

T. D. 26907 of December 14, 1905, is hereby revoked.

Respectfully, ANDREW J. PETERS,
(33029.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36646.)

*Glove leather.*

Appeal directed from decision of the Board of United States General Appraisers of July 5, 1916, G. A. 7934 (T. D. 36557), involving the classification of certain chamois skins.

TREASURY DEPARTMENT, *August 28, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 15th instant, inviting attention to the decision of the Board of United States General Appraisers of July 5, 1916, G. A. 7934 (T. D. 36557), wherein certain chamois skins prepared for making gloves, which skins had been assessed with duty at the rate of 15 per cent ad valorem as chamois skins under paragraph 359 of the tariff act of October 3, 1913, were held by the board to be dutiable at the rate of 10 per cent ad valorem as glove leather under the same paragraph.

You are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs

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Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, WM. P. MALBURN,
(83820.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

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(T. D. 36647—G. A. 7955.)

*Panama Canal act.*

PANAMA CANAL ACT—SECTION 5—SAILORS' OUTFITS.

The provision of section 5, act of August 24, 1912, "all materials of foreign production which may be necessary for the construction or repair of vessels built in the United States * * * and all articles necessary for their outfit and equipment," does not embrace articles sold to sailors as a part of their outfits.

United States General Appraisers, New York, August 22, 1916.

In the matter of protests 740942, etc., of Andrew R. Steven against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

*Curie, Smith & Maxwell* (*Thomas M. Lane* of counsel) for the importer.

*Bert Hanson*, Assistant Attorney General (*William A. Robertson*, special attorney), for the United States.

Before Board 3 (WAITE and HAY, General Appraisers).

HAY, *General Appraiser:* The merchandise which forms the subject of these protests is mattress covers, assessed by the collector under paragraph 359, act of 1909, and paragraph 284, act of 1913. No claim is made as to the correctness of the classification, but the protests claim free entry under section 5 of the Pannma Canal act of August 24, 1912 (37 Stat. L., 562).

Many questions are raised by the protests. All but one of these questions were thoroughly discussed in Conkey's case, G. A. 7668 (T. D. 35086), which was affirmed by the Court of Customs Appeals in United States *v.* Conkey (6 Ct. Cust. Appls., 487; T. D. 36122). The remaining question not involved in that case is, Under the facts of this case does the provision of section 5 apply? So much of that section as is material to this question reads as follows:

All materials of foreign production which may be necessary for the construction or repair of vessels built in the United States * * * and all articles necessary for their outfit, equipment, etc.

The quoted language designates quite specifically what, under the provisions of that act, may be imported free of duty. It must be such articles as are necessary for the construction or repair of a vessel built in the United States or such articles as are necessary for the outfit and equipment of such a vessel.

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By the testimony in the case at bar it is established that the mattress covers in question were bought by the United States and delivered at its various navy yards by the protestant or his agent; that these same mattress covers were in turn sold by the United States to the sailors, either upon the vessel, or at the navy yard or training station, to be used by the sailors as part of their outfits. The testimony shows that every man in the United States Navy, that is, every enlisted man, is required to have a certain outfit which he himself provides. To secure uniformity in that outfit the United States purchases these articles and sells them to the men, charging them just what they cost. The men actually pay for the articles and they become their property, to keep and do whatever they please with whenever they may leave the Navy, the United States retaining no title whatever in them. The mattress covers in question are articles of this character and were disposed of as above stated. They are, therefore, in no sense materials necessary or used in the construction of a vessel, nor are they articles necessary or used in the outfit and equipment of a vessel.

The protests are overruled.

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*Abstracts of decisions of the Board of General Appraisers.*

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*Board 1*—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

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BEFORE BOARD 2, AUGUST 22, 1916.

**No. 40087.**—Protest 773382 of F. L. Kraemer & Co. (New York).

CALENDARS IN CHIEF VALUE OF COTTON—PRINTED MATTER.—The merchandise in question consists of calendars made by pasting a piece of cotton velvet in the form and appearance of a cat to a piece of cardboard of the same shape and having a small printed paper calendar pad attached to the article by means of a ribbon. It was classified as a manufacture of cotton at 30 per cent ad valorem under paragraph 266, tariff act of 1913, and is claimed dutiable at 15 per cent under paragraph 329 as printed matter.

Opinion by Cooper, G. A. Following Ringk *v.* United States (164 Fed., 1021; T. D. 29037), United States *v.* Deutsch (178 Fed., 272; T. D. 30387), and G. A. 7917 (T. D. 36484), the merchandise was held dutiable at 15 per cent under paragraph 329, as claimed.

**No. 40088.**—Protests 777017, etc., of Wright & Graham Co. (New York).

COTTON CLOTH, WOVEN FIGURED.—Certain woven figured cotton cloth classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913, is claimed dutiable at the appropriate rate according to the average number of the yarn under paragraph 252.

Opinion by COOPER, G. A. The merchandise in question was held dutiable at the appropriate rate under paragraph 252, as claimed. United States *v.* Sherman (6 Ct. Cust. Appls., 271; T. D. 35501), affirming G. A. 7618 (T. D. 34858), followed.

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BEFORE BOARD 3, AUGUST 22, 1916.

**No. 40089.**—Protest 784958 of H. Jevne Co. (Los Angeles).

SHORTAGE OF VERMUTH.—It is claimed in this case that allowance should be made for shortage in a shipment of vermuth.

Opinion by WAITE, G. A. Protest unsupported; overruled.

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BEFORE BOARD 2, AUGUST 24, 1916.

**No. 40090.**—Protest 777403 of J. L. Loose (St. Louis).

BAMBOO CURTAINS IN CHIEF VALUE OF TINSEL WIRE.

COOPER, *General Appraiser:* The merchandise covered by this protest consists of bamboo curtains, which are bound and reinforced by strips of cloth made of cotton and metal threads running lengthwise of the curtains. The curtains are also provided with a cord, fastened to them by being passed through a metal eye. The goods were classified as appliquéd articles and returned for duty at the rate of 60 per cent ad valorem under paragraph 358 of the act of 1913. Protestant claims the same to be properly dutiable at the rate of 20 per cent or 25 per cent ad valorem under paragraph 175, 15 per cent ad valorem under paragraph 176, 40 per cent ad valorem under paragraph 150, 30 or 35 per cent ad valorem under paragraph 258, 30 per cent ad valorem under paragraph 266, or 35 per cent ad valorem under paragraph 284.

Under the ruling in United States *v.* Hamburger Levine Co. (5 Ct. Cust. Appls., 217; T. D. 34382) the articles are not appliquéd within the meaning of that term in paragraph 358. It is agreed by stipulation between counsel for the importer and the United States that either cotton cord or metal thread is the component of chief value, and counsel for the importer concedes in his brief that the metal thread is the component of chief value. The merchandise, not being appliquéd, is not provided for in paragraph 358 as returned, but falls for duty under the provision for "articles made wholly or in chief value of tinsel wire, lame or lahn" in paragraph 150, and we hold that it is dutiable at 40 per cent ad valorem thereunder.

The protest is sustained.

**No. 40091.**—Protest 776751 of F. H. Cone (New York).

VEGETABLE FIBER.—Vegetable fiber cut into uniform lengths, dressed, dyed, and bunched, classified as Tampico fiber, by similitude, at 20 per cent ad valorem under paragraph 285, tariff act of 1913, is claimed free of duty under paragraph 499, 552, or 648, or dutiable at 10 or 15 per cent under paragraph 385.

Opinion by COOPER, G. A. On the authority of Cone *v.* United States (6 Ct. Cust. Appls., 263; T. D. 35477) the fiber in question was held dutiable as a nonenumerated manufactured article under paragraph 385.

**No. 40092.**—Protest 771580 of M. J. Corbett & Co. (New York).

BEADED WEARING APPAREL.—Tunics, robes, and other wearing apparel composed of silk net and chiffon decorated with beads or spangles are claimed dutiable as silk wearing apparel at 50 per cent ad valorem under paragraph 317, tariff act of 1913, or as articles composed wholly or in chief value of beads or spangles under paragraph 333.

Opinion by COOPER, G. A. The merchandise was found to be of the same character as that which was the subject of decision in Loewenthal *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464). It was accordingly held dutiable under paragraph 333.

**No. 40093.**—Protests 754428, etc., of R. F. Downing & Co. et al., protests 757364, etc., of F. B. Vandegrift & Co., and protests 760166, etc., of P. K. Wilson & Son (New York).

FIGURED COTTON CLOTH—COTTON QUILTS.—Fabrics classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of

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1913, are claimed dutiable under paragraph 252. Quilts and pillowcases are claimed dutiable at 25 per cent under paragraph 263 or 264.

Opinions by COOPER, G. A. Following United States *v.* Sherman (6 Ct. Cust. Appls., 271; T. D. 35501), which affirmed G. A. 7618 (T. D. 34858), the board held the figured cotton fabrics dutiable under paragraph 252. The quilts and pillowcases were held dutiable at 25 per cent under paragraph 264. . G. A. 7656 (T. D. 35019) followed.

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TREASURY DEPARTMENT, *August 26, 1916.*

*To officers of the customs and others concerned:*

The appended decision of the United States District Court for the Southern District of New York is published for the information of officers of the customs and others concerned.

(6477k.) ANDREW J. PETERS, *Assistant Secretary.*

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(T. D. 36648.)

*Duty—Priority in bankruptcy.*

Government's claim for duties entitled to priority as taxes under section 64a of the bankruptcy act.

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK.

*In re Rosenthal Bros. Ex parte United States of America.*

This is a petition to review the order of a referee in bankruptcy holding the United States entitled, under section 64a of the bankruptcy act, to a priority in the payment of a claim. The claim was for the balance due the United States upon duties imposed upon silks imported by the bankrupts. The original amount of the duties had been reduced by sale of the goods, but a balance of $651.33 remained, which was concededly owed by the bankrupts.

*Charles L. Greenhall* for the petitioner.

*Earl B. Barnes* for the respondent.

LEARNED HAND, *District Judge:* The question turns upon whether the duties were a "tax" under section 64a. *In re* Pedlow (32 Am. Bank Rep., 808) Referee Dexter held that duties were not taxes, and this was affirmed by Judge Hough in an unreported decision. That decision, however, was certainly intended only to serve as a stepping stone to a final decision, not as a binding precedent, as clearly appears from the memorandum handed down. Therefore, I shall not treat it as such.

The word "tax" in section 64a is certainly used broadly. New Jersey *v.* Anderson (203 U. S., 483, 492). It covers a franchise license tax, which is rather akin to an excise upon the privilege of doing business in corporate form than tax proper. The language used of the section in New Jersey *v.* Anderson, *supra*, would include a duty or impost. It is as follows: "Generally speaking, a tax is a pecuniary burden laid upon individuals or property for the purpose of supporting the Government." A case like United States *v.* 59 Demijohns (39 Fed., 401) is not in point, because it construes the word "tax," when it occurs in a statute which distinguishes between taxes and duties. Here the word is used alone apparently to cover all sorts of governmental exactions.

Were it not true, a strange result would follow. Taxes would have a priority—all debts to the United States would have a priority—though in later order duties alone would share equally with all other creditors. I say that debts to the United States would have priority, because that is the obvious implication from Guaranty Co. *v.* Title & Security Co. (224 U. S., 152). It is true that the only question in that case

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was of the priority between debts to the United States and wage claims, yet some priority was certainly supposed to be enjoyed by debts to the United States by virtue of section 64b (5).

The sovereign has always claimed priority in the payment of claims due it, and there is no conceivable reason, to my thinking, why an artificial distinction should be made because section 64a was not redundant in its expression.

Order affirmed; petition denied.

July 7, 1916.

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(T. D. 36649.)

*Drawback on spavin cure.*

Drawback on spavin cure for animals manufactured by the Dr. J. B. Kendall Co., of Enosburg Falls, Vt., with the use of domestic tax-paid alcohol.—T. D. 30323 of February 3, 1910, revoked.

TREASURY DEPARTMENT, *August 30, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on spavin cure for animals made by the Dr. J. B. Kendall Co., of Enosburg Falls, Vt., with the use of domestic tax-paid alcohol.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated July 28, 1916, transmitted herewith, which will show, in the case of each lot of spavin cure manufactured for exportation with benefit of drawback, the lot number and date of exportation thereof, the quantity, proof, and identity of the domestic tax-paid alcohol and the quantity of the article produced and the number of bottles. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of domestic tax-paid alcohol used in the manufacture of the exported product, as shown by the abstract from the manufacturing record.

T. D. 30323 of February 3, 1910, allowing drawback on spavin cure for animals and spavin cure refined, is hereby revoked.

Respectfully, WM. P. MALBURN,
(70954.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36650.)

*Drawback on gummed paper.*

Drawback on gummed paper manufactured or produced by the Nashua Gummed & Coated Paper Co., of Nashua, N. H., with the use of imported Swedish Kraft paper.—T. D. 30996 of October 3, 1910, revoked.

TREASURY DEPARTMENT, *August 30, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations

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(chapter 18 of the Customs Regulations of 1915) on gummed paper manufactured or produced by the Nashua Gummed Coated Paper Co., of Nashua, N. H., with the use of imported Swedish Kraft paper.

A manufacturing record shall be kept in accordance with the sworn statement of the manufacturers, which shall show, in the case of each lot of gummed paper manufactured for benefit of drawback, the quantity and identity of the imported Swedish Kraft paper used, the quantity of such paper appearing in the exported gummed paper, the quantity of waste incurred, and the value of such waste. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported Swedish Kraft paper used in the manufacture of the exported gummed paper, as shown by the abstract from the manufacturing record, the allowance for waste to be reduced according to the quantity of imported paper which the value of the waste will replace.

T. D. 30996 of October 3, 1910, is hereby revoked.

Respectfully, WM. P. MALBURN,
(73068.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

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(T. D. 36651.)

*Drawback on beaver black board.*

T. D. 34966 of December 8, 1914, extended to cover beaver black board, in black or green, manufactured by the Beaver Co., of Buffalo, N. Y., with the use of imported wood-pulp board.

TREASURY DEPARTMENT, *August 30, 1916.*

SIR: The department's regulations of December 8, 1914 (T. D. 34966), providing for the payment of drawback on beaver board manufactured by the Beaver Co., of Buffalo, N. Y., with the use of imported wood-pulp board, are hereby extended to cover the manufacture by said company in accordance with a sworn statement dated August 5, 1916, which is transmitted herewith, of beaver black board, colored black or green, manufactured with the use of imported wood-pulp board.

Supplemental sworn statements showing changes in kinds and quantities of imported materials used, or changes in the manner of packing the board for export, may be filed, and upon verification thereof by the special agent drawback on the additional boards covered thereby may be allowed.

Respectfully, WM. P. MALBURN,
(102996.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36652.)

*Appraisement of zinc.*

T. D. 36446, relative to appraisement of zinc in ore, modified.

TREASURY DEPARTMENT, *August 31, 1916.*

*To appraisers of merchandise and others concerned:*

The plan for the appraisement of zinc in ore, published in T. D. 36446, is hereby modified, to provide that the method therein set forth shall not apply to sulphide ores assaying 40 per cent or less of zinc. The zinc in such ores should be appraised at not less than the contract or purchase price.

(101088.) ANDREW J. PETERS, *Assistant Secretary.*

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(T. D. 36653.)

*Drawback on Black Rock wall board.*

T. D. 34966 of December 8, 1914, extended to cover Black Rock wall board manufactured by the Black Rock Wall Board Co., of Buffalo, N. Y., with the use of imported wood-pulp board.

TREASURY DEPARTMENT, *August 31, 1916.*

SIR: The department's regulations of December 8, 1914 (T. D. 34966), providing for the payment of drawback on beaver board manufactured by the Beaver Co., of Buffalo, N. Y., with the use of imported wood-pulp board, are hereby extended to cover Black Rock wall board manufactured by the Black Rock Wall Board Co., of Buffalo, N. Y., with the use of imported wood-pulp board.

Supplemental sworn statement showing changes in the kinds and quantities of imported materials used or changes in the manner of packing the manufactured wall board for exportation may be filed, and upon verification thereof by the special agent drawback on the boards covered thereby may be allowed.

Respectfully, ANDREW J. PETERS,
(102996-1.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36654—G. A. 7956.)

*Embroidered silk fans.*

1. EMBROIDERED FANS.

Embroidered fans are dutiable at 50 per cent ad valorem as "fans of all kinds" under paragraph 349, tariff act of 1913, and not at 60 per cent ad valorem as "articles or fabrics embroidered in any manner by hand or machinery," under paragraph 358.

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2. CONSTRUCTION.

When a provision has received a judicial interpretation and the same provision is later reenacted, there is a presumption that this interpretation was in view on reenactment.

United States General Appraisers, New York, August 29, 1916.

In the matter of protests 788082-57642, etc., of Marshall Field & Co. *et al.* against the assessment of duty by the collectors of customs at the ports of Chicago and New York.

[Reversed.]

*Harry W. Nay* and *Churchill, Marlow & Hines* for the importers.

*Bert Hanson*, Assistant Attorney General (*Charles D. Lawrence, Martin T. Baldwin*, and *Harry M. Farrell*, special attorneys), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; FISCHER, G. A., not participating).

COOPER, *General Appraiser:* The merchandise under consideration in this case consists of embroidered fans composed in chief value of silk. They were returned for duty at the rate of 60 per cent ad valorem under the following provision in paragraph 358 of the act of 1913:

358. * * * embroideries, wearing apparel, handkerchiefs, and all articles or fabrics embroidered in any manner by hand or machinery, whether with a plain or fancy initial, monogram, or otherwise, or tamboured, appliquéd, or scalloped by hand or machinery, any of the foregoing by whatever name known * * *

Protestants claim that the articles are dutiable at 50 per cent ad valorem under paragraph 349 as "fans of all kinds, except common palm-leaf fans." The importers rely upon the decision in the case of United States *v.* Harper (2 Ct. Cust. Appls., 101; T. D. 31655) wherein it was held that embroidered fans were dutiable under the provision for "fans of all kinds."

The Assistant Attorney General contends that the phrase "by whatever name known" attached to the embroidery provision makes inapplicable the ordinary rules as to specific designation, and that accordingly the provision in paragraph 349 for "fans of all kinds" must give way to the all-inclusive terms of the embroidery paragraph. The Government relies on the following decisions holding that the phrase "by whatever name known" makes the provision to which it is attached so broad that it will cover articles mentioned by name in other paragraphs: Smith *v.* United States (5 Ct. Cust. Appls., 40; T. D. 34008), Mason *v.* Robertson (139 U. S., 624), and *In re* Lord & Taylor (G. A. 7644; T. D. 34930).

The case at bar is stronger for the importers than that in any of the decisions above mentioned for the reason that the provision for fans in paragraph 349 is magnified and enlarged by the phrase "of all kinds." In the case of United States *v.* Harper, *supra*, the court said:

The expression "fans of all kinds," which means all kinds of fans, naturally suggests every imported fan, regardless of its component material or condition.

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Another consideration in favor of the importers' contention is that paragraph 349 contains the exception of "common palm-leaf fans." With respect to this provision the court, in the case cited, quoted with approval the following excerpt from the board's opinion:

> Upon a familiar principle of construction the enumeration of the exceptions from this paragraph includes *ex industria* all the articles which Congress intended should be excepted therefrom. Palm-leaf fans, therefore, being expressly excepted from the provisions of the paragraph, the natural and legal inference is that palm-leaf fans alone are the only fans intended by Congress to be excepted therefrom. This exception does not carry with it embroidered fans, but, by the principle of construction suggested, leaves them included within the very broad term "fans of all kinds."

That decision covered merchandise imported under the tariff act of 1897. Paragraph 339 of that act contained the following proviso:

> *Provided*, That no wearing apparel or other article or textile fabric, when embroidered by hand or machinery, shall pay duty at a less rate than that imposed in any schedule of this act upon any embroideries of the materials of which such embroidery is composed.

The tariff act of 1909 contained a similar proviso in paragraph 349. By virtue of these provisos articles mentioned by name in other paragraphs of the acts, when they were embroidered, were held dutiable under the embroidery paragraphs instead of under the *eo nomine* provisions therefor. The proviso was held to extend to every schedule in the tariff act, unless there was specific language to expressly withdraw the article from the effect of the proviso. Embroidered fans, however, were held not to come within the terms of the embroidery paragraphs by reason of the broad scope of the provision for "fans of all kinds." The proviso was not reenacted in the tariff act of 1913, but the phrase "by whatever name known" was added to the embroidery provision, and, in the case of Lord & Taylor, G. A. 7644 (T. D. 34930), we held that this phrase had the same effect as the provisos in the former tariff acts.

In the present act the provision for "fans of all kinds" was reenacted without change. The continuance of the words in this act carries the presumption that the term was there employed in the sense affixed by judicial interpretation, and it is our opinion that Congress intended that embroidered fans should receive the same classification under the act of 1913 that they had received under former tariff acts. The fact that embroidered articles are specially excepted from paragraphs 261, 264, 282, 315, 333, etc., shows that Congress did not believe that it had created a provision for embroideries as broad and all-inclusive as is contended for by the Assistant Attorney General, because, if such had been the case, the excepting provisions above mentioned would not have been necessary.

Upon the reasons and authorities above given, the fans in question are held dutiable at 50 per cent ad valorem under paragraph 349. The protests are sustained.

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(T. D. 36655—G. A. 7957.)

*American goods returned.*

1. AMERICAN GOODS RETURNED—REGULATIONS.

The Secretary of the Treasury has, in article 333, Regulations of 1915, made regulations providing that proof shall be submitted to the collector of the identity of the articles that are claimed to be American goods returned. Compliance with these regulations is a condition precedent to the right of free entry under the American-goods-returned paragraph of the law; in other words, when in a paragraph of the law direct authority is given by Congress to the Secretary to make regulations for its administration, these regulations when once made by the Secretary become a part and parcel of the law itself.—Central Vermont Railroad Co.'s case, G. A. 4403 (T. D. 20957); E. Battelli's case, G. A. 6435 (T. D. 27590).

2. SAME—PROOF.

The regulations which the Secretary is authorized to make for the administration of paragraph 404, tariff act of 1913, relate solely to proof of the identity of merchandise. Proof, therefore, of the fact that the protestant, who was the importer of the merchandise, was also the exporter may be made at the time of trial before the Board of United States General Appraisers.

United States General Appraisers, New York, September 1, 1916.

In the matter of protests 79568–46712, etc., of Vaccaro Bros. & Co. against the assessment of duty by the collector of customs at the port of New Orleans.

[Reversed.]

*C. F. Flott* for the importers.

*Bert Hanson*, Assistant Attorney General (*John J. Mulvaney*, special attorney), for the United States.

Before Board 3 (WAITE and HAY, General Appraisers).

HAY, *General Appraiser:* The merchandise which forms the subject of these protests consists of coal and cement bags. Duty was assessed upon the same under the appropriate paragraph of the tariff act of 1913. The claim of the protestants is that they should have been admitted free of duty under paragraph 404 as the "growth, produce, or manufacture of the United States, when returned after having been exported without having been advanced in value or improved in condition by any process of manufacture or other means." This paragraph of the law, which is generally known as the American-goods-returned paragraph, provides, after naming the articles of American origin that have been exported that may be returned free of duty, that "proof of the identity of such articles shall be made under general regulations to be prescribed by the Secretary of the Treasury." The Secretary of the Treasury has, in article 333, Regulations of 1915, made regulations providing what proof shall be submitted to the collector of the identity of the articles that are claimed to be American goods returned. Compliance with these regulations has been held to be a condition precedent to the right of free entry under this provision of law; in other words, it has been held that when in a paragraph of the law direct authority is given by Congress to the Secretary to make regulations for its administration, these

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regulations, when once made by the Secretary, become a part and parcel of the law itself. Central Vermont Ry. Co.'s case, G. A. 4403 (T. D. 20957); E. Battelli's case, G. A. 6435 (T. D. 27590).

The authority given by Congress to the Secretary in this paragraph is to make regulations prescribing what proof of the identity of such articles shall be made. Proof of such identity therefore must be made to the collector to entitle the importer to the benefits of paragraph 404. After having thus legislated, Congress proceeds in that paragraph to say that the exemption of bags from duty shall apply only to such domestic bags as may be imported by the exporter thereof. In these cases the appraiser reports to the collector as follows:

This office is of the opinion that the bags are the manufacture of the United States, as all the formalities of the regulations for the importation of returned American goods were complied with, with the exception of proof or certificate that the importer was the exporter.

This, if it means anything, means that the regulations relative to the identity of the bags have been complied with. The collector, acting doubtless upon the appraiser's reports, says in his letters of transmittal:

As paragraph 404 of the tariff act provides that the exemption of bags from duty shall apply only to such bags as may be imported by the exporter thereof, and as the importer failed to present evidence showing that the bags were exported by him, duty was assessed under paragraph * * *, as above stated.

As the collector fails to say anything about the compliance with such regulations as the Secretary had power under the act to make, but based his refusal to grant free entry purely upon the ground that there was not before him evidence that the importer and the exporter were the same person, taken in connection with the appraiser's report to the collector that the regulations had been complied with, leaves the case as it comes before this board with a question of fact and a question of law to be determined.

The question of fact is, Are the importer and the exporter the same? The testimony in each case shows conclusively, and it is not controverted, that the importer of the bags was the exporter thereof.

The question of law is, Is the protestant required to make proof of this fact under the regulations prescribed by the Secretary of the Treasury? We think that he is not. Had Congress intended such to be the case, the provision would have preceded that which gave the Secretary power to make regulations. The specific power given by Congress to the Secretary is to make regulations as to the proof of identity of the merchandise. This the Secretary has done and these regulations have been complied with. Proof of the fact that the exporter and the importer are one and the same person—that is, that the bags were exported by the same person who imported them

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and who claims the right of free entry—has been made to the satisfaction of this board. This provision of law applies only to bags. The provision of law with reference to proof of identity under the regulations of the Secretary applies to all of the articles named in the paragraph, whereas the requirement that the merchandise must be imported by the same person who exports it applies only to bags, and this fact is one which may be proved otherwise than under such regulations as the Secretary may make.

The protests are sustained and the collector directed to reliquidate the entries admitting the bags free of duty.

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## *Abstracts of decisions of the Board of General Appraisers.*

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*Board 1*—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

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BEFORE BOARD 2, AUGUST 29, 1916.

**No. 40094.**—Protests 773696-56062, etc., of Marshall Field & Co. (Chicago).

HANDKERCHIEFS.—Embroidered handkerchiefs classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable at 20 or 30 per cent under paragraph 255, or at 35 or 40 per cent under paragraph 282.

Opinion by COOPER, G. A. Certain of the handkerchiefs found to be similar to those held not to be embroidered in G. A. 7768 (T. D. 35654), affirmed in Field *v.* United States (7 Ct. Cust. Appls., —; T. D. 36260), were held dutiable as hemmed or hemstitched handkerchiefs in chief value of flax under paragraph 282. Protests sustained in part.

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BEFORE BOARD 2, SEPTEMBER 1, 1916.

**No. 40095.**—Protests 771065, etc., of G. W. Sheldon & Co. (New York).

FIGURED COTTON CLOTH.—Merchandise classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913, is claimed dutiable under paragraph 252.

Opinion by COOPER, G. A. On the authority of G. A. 7618 (T. D. 34858), affirmed in United States *v.* Sherman (6 Ct. Cust. Appls., 271; T. D. 35501), the figured cotton cloth in question was held dutiable at the appropriate rate under paragraph 252 as claimed.

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BEFORE BOARD 3, SEPTEMBER 1, 1916.

**No. 40096.**—Protest 771794 of Mark Cross Co. (New York).

FITTED LEATHER CASES—SLIPPERS.—Leather slippers in small leather pouches or cases, classified as leather cases fitted with traveling sets, under paragraph 360, tariff act of 1913, are claimed free of duty as boots and shoes under paragraph 530.

HAY, *General Appraiser:* * * * Paragraph 360, under which the merchandise was assessed, provides for leather cases fitted with traveling sets. The issue in this case is the same as that in the cases of H. S. Tavshanjian (Abstract 38153) and E. Hermann (Abstract 38319). It impresses us as rather fanciful to call the case in which the

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slippers are carried by the traveler a container or covering, using those words as they are used in connection with imported merchandise. The protest is overruled.

**No. 40097.**—Protest 800586 of E. Wedemann (New York).

CIGARETTE MACHINES—SMOKERS' ARTICLES.—The merchandise in question is described by the appraiser as small cigarette machines composed of metal, used by the individual in making his own cigarettes. They were classified as smokers' articles under paragraph 381, tariff act of 1913, and are claimed dutiable as manufactures of metal under paragraph 167.

Opinion by HAY, G. A. The article was found to be a tubular piece of brass about one-fourth of an inch in diameter, split in half and hinged, and capable of being used to assist a smoker in rolling a cigarette. It was held properly classified as a smoker's article under paragraph 381.

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REHEARINGS GRANTED.

**No. 40098.**—SAMPLES.—Protest 794631 of Duplan Silk Co. G. A. 7921 (T. D. 36488).

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## (T. D. 36656.)

### *Curtains of Job's-tear seeds.*

Curtains of Job's-tear seeds dutiable at the rate of 50 per cent ad valorem, by similitude to curtains of beads under paragraphs 333 and 386 of the tariff act of 1913.

TREASURY DEPARTMENT, *September 7, 1916.*

SIR: The department duly received your letter of July 24, 1916, relative to a proposed change in practice in the classification of curtains made of Job's-tear seeds on strings.

It appears there is a variance in practice between your port and the port of Philadelphia, classification of the articles being made at Philadelphia by similitude as curtains in chief value of bamboo, wood, straw, or composition of wood, under paragraph 175 of the tariff act of 1913, at the rate of 20 per cent ad valorem, while at your port the articles are classified as dutiable as nonenumerated manufactured articles under paragraph 385 of the tariff act of 1913, at the rate of 15 per cent ad valorem.

You transmit with your letter a communication from the appraiser at your port stating that the use of the articles is similar to that of curtains of beads, and suggesting that they are properly dutiable by similitude to beaded curtains under paragraph 333 of the tariff act.

Abstract 37237, holding portières of Job's-tears to be dutiable as nonenumerated manufactured articles rather than as beaded articles under the tariff act of 1909, is apparently contrary to such classification, but as it does not appear that the board considered the question of similitude, it is not believed that the decision should be considered as controlling.

In view of the foregoing, the department is of the opinion that the articles are dutiable at the rate of 50 per cent ad valorem by simili-



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tude, as to use, to curtains of beads under paragraph 333 of the tariff act of 1913, by virtue of the similitude clause of paragraph 386 of the said act. You will be governed accordingly in the case of merchandise of the character in question imported or withdrawn from warehouse 30 days after the date hereof.

Respectfully, ANDREW J. PETERS,
(96000) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36657.)

*Drawback on cocaine hydrochloride.*

T. D. 35404 of May 14, 1915, extended to cover the manufacture or production by the Mallinckrodt Chemical Works, of St. Louis, Mo., of cocaine hydrochloride (muriate) with the use of imported crude cocaine.

TREASURY DEPARTMENT, *September 8, 1916.*

SIR: The department's regulations of May 14, 1915, T. D. 35404, providing for the payment of drawback on cocaine hydrochloride (muriate) manufactured by the Mallinckrodt Chemical Works, of St. Louis, Mo., with the use of imported cocoa leaves, are hereby extended to cover the manufacture by said company of cocaine hydrochloride (muriate) manufactured or produced from imported crude cocaine.

Copies of the report of the special agent, and sworn statements of the manufacturers, dated March 28, 1916, are transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on cocaine hydrochloride (muriate) exported on and after April 1, 1916.

Respectfully, ANDREW J. PETERS,
(99458.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *St. Louis, Mo.*

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(T. D. 36658.)

*Drawback on curtains.*

Drawback allowed on curtains manufactured by the Loeb & Schoenfeld Co., of New York, with the use of imported cotton netting.

TREASURY DEPARTMENT, *September 6, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and chapter 18 of the Customs Regulations of 1915, on curtains manufactured by Loeb & Schoenfeld Co., of New York, with the use of imported cotton netting.

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A manufacturing record shall be kept in accordance with the sworn statement of the company, dated August 4, 1916, which is transmitted herewith for filing in your office, which shall show, in addition to the usual import data, the date of manufacture of each lot of curtains made for exportation with the benefit of drawback, the number of pairs of curtains produced, the dimensions thereof, the kind and quantity of imported material used in the manufacture and contained in the finished product and the import lot from which the material was taken. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported material appearing in the finished curtains.

Drawback may be allowed under these regulations on curtains exported on and after June 10, 1916.

Respectfully, ANDREW J. PETERS,
(105168.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36659.)

*Duties on bonds for invoices.*

**Duties collected on bonds for the production of consular invoices should be collected and accounted for as duty on bonds. Increased duties accruing on goods in warehouse should be collected when withdrawn for consumption. If withdrawn for exportation bond should be canceled without collection of duty.**

TREASURY DEPARTMENT, *September 7, 1916.*

SIR: The department is in receipt of your letter of the 25th ultimo, requesting instructions relative to the collection of increased duties due on bonds given for the production of a consular invoice.

In the opinion of the department the notice to the importer should be a statement of the amount of duty due under the bond, and when the amount is collected it should be accounted for under the item "Bonds to secure payment of duties collected," whether the amount is paid voluntarily or under a judgment in an action on the bonds.

The amount of increased duties is a debt arising under the stipulation of the bond and in any event should be accounted for as duties.

In answer to your inquiry whether or not the amount due should be paid before the merchandise entered for warehouse is withdrawn for consumption, transportation, or exportation, the department is of the opinion that notice of the increased duty due under the bond should be given the importer and the payment demanded when the goods are withdrawn for consumption but the payment should not be a condition precedent to the release of the goods. If the goods are withdrawn for exportation within three years the bond for the production of the invoice should be canceled without demand for the

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payment of the duties, as all duties accruing on the importation are remitted on exportation from warehouse. When goods are withdrawn for transportation and rewarehousing at another port, the collector at the secondary port should be notified of the duty due under the bond and requested to inform the collector at the first port when the goods are withdrawn either for consumption or exportation.

The department is further of the opinion that the increased duties charged against the bond are not such fees, charges, or exactions, as are subject to protest under paragraph N of section 3 of the present tariff, and that when the amount shown to be due does not exceed $1 no collection should be made.

Respectfully, ANDREW J. PETERS,
(105183.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36660.)

*Drawback on cigarettes.*

Drawback on cigarettes manufactured by George E. Nace, of Brooklyn, N. Y., with the use of imported tobacco.

TREASURY DEPARTMENT, *September 11, 1916.*

SIR: Drawback is hereby allowed under paragraph O, section 4, of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on cigarettes manufactured by George E. Nace, of Brooklyn, N. Y., with the use of wholly imported tobacco.

The allowance shall not exceed the quantity of imported leaf tobacco appearing in the exported cigarettes as shown by the sworn statement of the manufacturer dated August 9, 1916, which is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on cigarettes exported on and after July 11, 1916.

Respectfully, ANDREW J. PETERS,
(105322.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36661.)

*Drawback on lubricating oil.*

T. D. 36081 of January 20, 1916, extended to cover lubricating oil manufactured by the Hudson Oil Co., for the account of Amerman & Patterson, with the use of imported shark oil.

TREASURY DEPARTMENT, *September 11, 1916.*

SIR: The department's regulations of January 20, 1916, T. D. 36081, providing for the payment of drawback on lubricating oil

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manufactured by the Hudson Oil Co. (Inc.), of New York, N. Y., with the use of imported whale oil, are hereby extended to cover the manufacture by said company for the account of Amerman & Patterson of lubricating oil manufactured with the use of imported shark oil.

The allowance shall not exceed the quantity of shark oil used and appearing in the exported product.

Copies of the report of the special agent and sworn statements of Amerman & Patterson and the Hudson Oil Co., dated August 11, 1916, are transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on lubricating oil exported on and after June 29, 1916.

Respectfully, ANDREW J. PETERS,
(98978–1.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36662.)

*Drawback on empty shell casings.*

Drawback allowed on 4½-inch empty high-explosive shell casings manufactured by the Crocker-Wheeler Co., of Ampere, N. J., with the use of imported nose bushings.

TREASURY DEPARTMENT, *September 11, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and (chapter 18 of the Customs Regulations of 1915) on 4½-inch empty high-explosive shell casings, manufactured by the Crocker-Wheeler Co., of Ampere, N. J., with the use of imported nose bushings.

A manufacturing record shall be kept by the manufacturer in accordance with the sworn statement dated August 2, 1916, which is transmitted herewith, which will show, in addition to the usual import data, the number of imported nose bushings attached to the empty shells and the total number of such shells manufactured for exportation with benefit of drawback. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed one nose bushing for each empty shell casing exported.

Drawback may be allowed under these regulations on empty shells exported on and after June 15, 1916.

Respectfully, ANDREW J. PETERS,
(103766–16.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36663.)

*Mexico, merchandise in warehouse for.*

**Merchandise in warehouse on August 1, 1916, and intended for exportation to Mexico may remain in warehouse until conditions in Mexico are such as to make it commercially practicable to export the same, in accordance with joint resolution approved September 5, 1916.**

TREASURY DEPARTMENT, *September 11, 1916.*

*To collectors of customs and others concerned:*

Attention is invited to the following joint resolution approved September 5, 1916, amending section 2971, Revised Statutes:

**That the limitation of section twenty-nine hundred and seventy-one of the Revised Statutes of the United States as to the period during which merchandise may remain in bonded warehouse without the payment of duty for exportation to Mexico be, and the same hereby is, extended to all merchandise which was in bonded warehouse on August first, nineteen hundred and sixteen, and intended for exportation to Mexico, until such time as in the opinion of the Secretary of the Treasury conditions in Mexico are such as to make it commercially practicable to export the merchandise to that country.**

In accordance with the foregoing provision of law all merchandise intended for exportation to Mexico, and in bonded warehouse on August 1, 1916, should be permitted to remain in warehouse at the expense of the importer until such time as the Secretary of the Treasury shall declare that conditions in Mexico are such as to make it commercially practicable to export the merchandise to that country. However, the withdrawal of such merchandise for exportation to Mexico should be permitted at any time upon payment of the usual charges and expenses.

(92655-44.) ANDREW J. PETERS, *Assistant Secretary.*

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(T. D. 36664.)

*Drawback on lambskins.*

**Drawback on lambskins, bleached and electrified, by Haack & Co., of Brooklyn, N. Y., for the account of M. S. Elias, jr. (Inc.), of New York, N. Y.**

TREASURY DEPARTMENT, *September 11, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and (chapter 18 of the Customs Regulations of 1915) on bleached and electrified lambskins manufactured or produced by Haack & Co., of Brooklyn, N. Y., for the account of M. S. Elias, jr. (Inc.), from imported dressed Thibet lambskins.

The allowance for each bleached and electrified lambskin exported shall not exceed one imported dressed Thibet lambskin of the same size and grade.

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The sworn statements of Haack & Co. and the applicants, dated August 4 and August 5, 1916, respectively, are transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on lambskins exported on and after June 23, 1916.

Respectfully, ANDREW J. PETERS,
(105200.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36665.)

*Drawback on rubber nipples.*

Drawback on rubber nipples (perforated) manufactured or produced by Doniger & Co., of New York, N. Y., with the use of imported rubber nipples (blind).

TREASURY DEPARTMENT, *September 11, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and (chapter 18 of the Customs Regulations of 1915) on rubber nipples (perforated) manufactured or produced by Doniger & Co., of New York, N. Y., from imported rubber nipples (blind).

A manufacturing record shall be kept in accordance with the sworn statement of the manufacturer dated August 10, 1916, transmitted herewith, which will show, in addition to the usual import data, the lot number of each lot of nipples manufactured or produced for exportation with benefit of drawback and the number of nipples in each lot. A sworn abstract from the manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed one imported blind nipple for each perforated nipple exported.

Drawback may be allowed under these regulations on nipples exported on and after July 26, 1916.

Respectfully, ANDREW J. PETERS,
(105264.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36666.)

*Drawback on artificial oil of sassafras, safrol, and sassafrassy camphor oil.*

Drawback on artificial oil of sassafras, safrol, and sassafrassy camphor oil manufactured by the Dodge & Olcott Co., of New York, N. Y., with the use of imported crude camphor oil.

TREASURY DEPARTMENT, *September 11, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations

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(chapter 18 of the Customs Regulations of 1915) on artificial oil of sassafras, safrol, and sassafrassy camphor oil manufactured by the Dodge & Olcott Co., of New York, N. Y., with the use of imported crude camphor oil.

A manufacturing record shall be kept showing in the case of each lot of imported crude camphor oil treated the lot number and date of manufacture, the quantity, value, and identity of the imported crude camphor oil used, the quantity and value of each product obtained therefrom, and the quantity of worthless waste resulting. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The quantity of imported crude camphor oil which may be taken as a basis for liquidation may equal the quantity used in the manufacture of the exported products, as shown by the sworn abstract from the manufacturing records predicated on the distribution of the imported material used between the several products according to their relative values.

Drawback may be allowed under these regulations on the products covered thereby exported on or after November 19, 1915.

The sworn statement of the manufacturer, dated July 14, 1916, is transmitted herewith.

Respectfully, ANDREW J. PETERS,
(102115.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36667.)

*Dyestuffs, printing paper, and stamps.*

**Extracts of the revenue act providing rates of duty on dyestuffs and printing paper, and repealing the stamp taxes on entries and bonds.**

TREASURY DEPARTMENT, *September 12, 1916.*

*To collectors of customs and others concerned:*

The appended extracts of an act entitled "An act to increase the revenue, and for other purposes," approved September 8, 1916, is published for the information of customs officers and others concerned.

Section 410 of the act repeals so much of the act of October 22, 1914, and the joint resolution of December 31, 1915, as provides for documentary stamps. Such stamps are not required on entries and bonds made on and after September 9, 1916.

Paragraph 902 provides that, unless otherwise provided in the act, it shall take effect on the day following its passage.

(104297.) ANDREW J. PETERS, *Assistant Secretary.*

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TITLE V.—DYESTUFFS.

SEC. 500. That on and after the day following the passage of this Act, except as otherwise specially provided for in this title, there shall be levied, collected, and paid upon the articles named in this section when imported from any foreign country into the United States or into any of its possessions, except the Philippine Islands and the islands of Guam and Tutuila, the rates of duties which are prescribed in this title, namely:

FREE LIST.

Group I. Acenaphthene, anthracene having a purity of less than twenty-five per centum, benzol, carbazol having a purity of less than twenty-five per centum, cresol, cumol, fluorene, metacresol having a purity of less than ninety per centum, methylanthracene, methylnaphthalene, naphthalene having a solidifying point less than seventy-nine degrees centigrade, orthocresol having a purity of less than ninety per centum, paracresol having a purity of less than ninety per centum, pyridin, quinolin, toluol, xylol, crude coal tar, pitch of coal tar, dead or creosote oil, anthracene oil, all other distillates which on being subjected to distillation yield in the portion distilling below two hundred degrees centigrade a quantity of tar acids less than five per centum of the original distillate, and all other products that are found naturally in coal tar, whether produced or obtained from coal tar or other source, and not otherwise specially provided for in this title, shall be exempt from duty.

DUTIABLE LIST.

Group II. Amidonaphthol, amidophenol, amidosalicylic acid, aniline oil, aniline salts, anthracene having a purity of twenty-five per centum or more, anthraquinone, benzoic acid, benzaldehyde, benzylchloride, benzidin, binitrobenzol, binitrochlorobenzol, binitronaphthalene, binitrotuluol, carbazol having a purity of twenty-five per centum or more, chlorophthalic acid, cumidin, dimethylaniline, dinaisidin, dioxynaphthalene, diphenylamin, metacresol having a purity of ninety per centum or more, methylanthraquinone, metanilic acid, naphthalene having a solidifying point of seventy-nine degrees centigrade or above, naphthylamin, naphthol, naphthylenediamin, nitrobenzol, nitrotoluol, nitronaphthalene, nitraniline, nitrophenylenediamin, nitrotoluylenediamin, orthocresol having a purity of ninety per centum or more, paracresol having a purity of ninety per centum or more, phenol, phthalic acid, phthalic anhydride, phenylenediamin, phenylnaththylamin, resorcin, salicylic acid, sulphanilic acid, toluidin, tolidin, toluylenediamin, xylidin, or any sulphoacid or sulphoacid salt of any of the foregoing, all similar products obtained, derived, or manufactured in whole or in part from the products provided for in Group I, and all distillates which on being subjected to distillation yield in the portion distilling below two hundred degrees centigrade a quantity of tar acids equal to or more than five per centum of the original distillate, all the foregoing not colors, dyes, or stains, photographic chemicals, medicinals, flavors, or explosives, and not otherwise provided for in this title, and provided for in the paragraphs of the Act of October third, nineteen hundred and thirteen, which are hereinafter specifically repealed by section five hundred and two, fifteen per centum ad valorem.

Group III. All colors, dyes, or stains, whether soluble or not in water, color acids, color bases, color lakes, photographic chemicals, medicinals, flavors, synthetic phenolic resin, or explosives, not otherwise specially provided for in this title, when obtained, derived, or manufactured in whole or in part from any of the products provided for in Groups I and II, natural alizarin and

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indigo, and colors, dyes, or color lakes obtained, derived, or manufactured therefrom, thirty per centum ad valorem.

SEC. 501. That on and after the day following the passage of this Act, in addition to the duties provided in section five hundred, there shall be levied, collected, and paid upon all articles contained in Group II a special duty of 2½ cents per pound, and upon all articles contained in Group III (except natural and synthetic alizarin, and dyes obtained from alizarin, anthracene, and carbazol; natural and synthetic indigo and all indigoids, whether or not obtained from indigo; and medicinals and flavors), a special duty of 5 cents per pound.

During the period of five years beginning five years after the passage of this Act such special duties shall be annually reduced by twenty per centum of the rate imposed by this section, so that at the end of such period such special duties shall no longer be assessed, levied, or collected; but if, at the expiration of five years from the date of the passage of this Act, the President finds that there is not being manufactured or produced within the United States as much as sixty per centum in value of the domestic consumption of the articles mentioned in Groups II and III of section five hundred, he shall by proclamation so declare, whereupon the special duties imposed by this section on such articles shall no longer be assessed, levied, or collected.

SEC. 502. That paragraphs twenty, twenty-one, twenty-two, and twenty-three and the words "salicylic acid" in paragraph one of Schedule A of section one of an Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October third, nineteen hundred and thirteen, and paragraphs three hundred and ninety-four, four hundred and fifty-two, and five hundred and fourteen, and the words "carbolic" and "phthalic," in paragraph three hundred and eighty-seven of the "free list" of section one of said Act, and so much of said Act or any existing law or parts of law as may be inconsistent with this title are hereby repealed.

## TITLE VI—PRINTING PAPER.

SEC. 600. That paragraph three hundred and twenty-two, Schedule M, and paragraph five hundred and sixty-seven of the free list of the Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October third, nineteen hundred and thirteen, be amended so that the same shall read as follows:

"322. Printing paper (other than paper commercially known as handmade or machine handmade paper, japan paper, and imitation japan paper by whatever name known), unsized, sized, or glued, suitable for the printing of books and newspapers, but not for covers or bindings, not specially provided for in this section, valued above 5 cents per pound, twelve per centum ad valorem: *Provided, however*, That if any country, dependency, province, or other subdivision of government shall impose any export duty, export license fee, or other charge of any kind whatsoever (whether in the form of additional charge or license fee or otherwise) upon printing paper, wood pulp, or wood for use in the manufacture of wood pulp, there shall be imposed upon printing paper, values above 5 cents per pound, when imported either directly or indirectly from such country, dependency, province, or other subdivision of government, an additional duty equal to the amount of the highest export duty or other export charge imposed by such country, dependency, province, or other subdivision of government, upon either printing paper or upon an amount of wood pulp, or wood for use in the manufacture of wood pulp necessary to manufacture such printing paper.

"567. Printing paper (other than paper commercially known as handmade or machine handmade paper, japan paper, and imitation japan paper by whatever name known), unsized, sized, or glued, suitable for the printing of books

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and newspapers, but not for covers or bindings, not specially provided for in this section, valued at not above 5 cents per pound, decalcomania paper not printed."

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## *Abstracts of decisions of the Board of General Appraisers.*

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*Board 1*—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

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BEFORE BOARD 1, SEPTEMBER 6, 1916.

**No. 40099.**—Protest 755764-54201 of G. W. Sheldon & Co. (Chicago), and protest 756621 of Rothfeld, Stern & Co. (New York).

MOHAIR COAT LININGS.—Mohair coat linings classified as cloth in chief value of the hair of the Angora goat at 40 per cent ad valorem under paragraph 308, tariff act of 1913, are claimed dutiable as cloth in chief value of wool at 35 per cent under paragraph 288 or 290.

Opinions by BROWN, G. A. The mohair coat linings in question were held properly classified at 40 per cent under paragraph 308. Rosenberg *v.* United States (7 Ct. Cust. Appls., —; T. D. 36510) followed.

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BEFORE BOARD 1, SEPTEMBER 8, 1916.

**No. 40100.**—Protest 789028 of Lanman & Kemp (New York).

LAVENDER FLOWERS—AROMATIC SUBSTANCE—DRUG.—Merchandise described in the appraiser's report as suitable for use as an aromatic substance was classified at 20 per cent ad valorem under paragraph 49, tariff act of 1913, and claimed free of duty under paragraph 477.

Opinion by MCCLELLAND, G. A. The merchandise was held free of duty as a crude drug under paragraph 477 as claimed. Abstract 39004 followed.

**No. 40101.**—Protest 793498 of F. A. Patrick & Co. (Duluth).

LEATHER GLOVES.—Leather gloves classified under paragraph 363, tariff act of 1913, are claimed dutiable as Schmaschen under paragraph 362.

Opinion by MCCLELLAND, G. A. Protest unsupported; overruled.

**No. 40102.**—Protest 784178 of S. Stern (New York).

ORNAMENTAL LEAVES—APPRAISER'S REPORT.—The appraiser's report, upon which the protest was submitted, describes the merchandise as consisting of "natural plants, artificially colored, or otherwise prepared, ornamental in character." They were classified at 60 per cent ad valorem under paragraph 347, tariff act of 1913, and are claimed free of duty under paragraph 497, or dutiable at 25 per cent under paragraph 210 or 368.

Opinion by MCCLELLAND, G. A. Protest unsupported; overruled.

**No. 40103.**—Protest 767109 of Shevlin-Clarke Co. (St. Paul).

SAWED LUMBER.—Lumber returned as sawed and classified at $2.375 per thousand feet board measure under paragraph 201, tariff act of 1909, is claimed dutiable at $2 per thousand feet under the same paragraph.

Opinion by MCCLELLAND, G. A. The merchandise was held properly classified at $2.375 per thousand feet. United States *v.* Saunders (2 Ct. Cust. Appls., 123; T. D. 31660) cited.

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**No. 40104.**—Protests 764712, etc., of Frank P. Dow Co. (Seattle).

FURNITURE.—Chairs, rockers, tables, settees, stools, lounges, and couches classified as in chief value of sea grass at 25 per cent ad valorem under paragraph 368, tariff act of 1913, are claimed dutiable as in chief value of wood at 15 per cent under paragraph 176.

Opinion by McCLELLAND, G. A. The furniture in question was found to be similar to that passed upon in Abstract 39130 and therefore held dutiable under paragraph 176 as claimed.

**No. 40105.**—Protests 404694, etc., of Frank & DeKeyser et al. (New York).

STEM WARE.—Certain stem ware classified as composed wholly or in chief value of blown glass is claimed dutiable as manufactures of glass.

Opinion by SULLIVAN, G. A. United States *v.* Fondeville (7 Ct. Cust. Appls., —; T. D. 36457) followed as to stem ware. Protests sustained in part.

**No. 40106.**—Protest 788684 of C. B. Richard & Co. (New York).

IMITATION CAT'S-EYES—BEADS.—Imitation cat's-eyes made of mother-of-pearl shell, classified as beads, unstrung, at 35 per cent ad valorem under paragraph 333, tariff act of 1913, are claimed dutiable as imitation precious stones for use in the manufacture of jewelry at 20 per cent under paragraph 357.

Opinion by SULLIVAN, G. A. The merchandise was found to consist of a dark opalescent stone about three-eighths of 1 inch in circumference and about three-sixteenths of 1 inch thick, the face and back being rounded, and being pierced with two holes from edge to edge. It was held properly dutiable under paragraph 357, as claimed.

**No. 40107.**—Protest 771372 of F. S. Carr Co. (Boston).

MOHAIR DRESS GOODS.—Mohair dress goods classified as cloth in chief value of the hair of the Angora goat at 40 per cent ad valorem under paragraph 308, tariff act of 1913, is claimed dutiable as cloth in chief value of wool at 35 per cent under paragraph 288 or 290.

Opinion by BROWN, G. A. The mohair dress goods in question was held properly classified at 40 per cent under paragraph 308. Rosenberg *v.* United States (7 Ct. Cust. Appls., —; T. D. 36510) followed.

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BEFORE BOARD 3, SEPTEMBER 8, 1916.

**No. 40108.**—Protest 768582 of W. H. Horstmann Co. (Philadelphia).

ADDITIONAL DUTY—ACT OF 1909—WAREHOUSE ENTRY.

HAY, *General Appraiser:* This is a protest against the assessment of additional duty under the provisions of paragraph I, section 3, tariff act of 1913, upon entries for warehouse made February 1, 1913, and December 27, 1912, the merchandise remaining in warehouse until after the passage of the act of 1913. The case is submitted for decision upon the following stipulation:

It is stipulated and agreed between counsel that the merchandise in question consists of cotton yarn, which was entered for warehouse on February 1, 1913, and December 27, 1912, and that it remained in warehouse on October 4, 1913.

It is further stipulated and agreed that the United States appraiser advanced the entered value of the merchandise and that General Appraisers Fischer and Waite, sitting as single general appraisers, duly appraised the yarn in question and found its value to be 6½ per cent more than the entered value.

It is further stipulated and agreed that under paragraph 314 of the tariff act of 1909, which was in force at time of entry, the amount of duty imposed by law was not increased by reason of the higher value found by General Appraisers Fischer and Waite.

It is further stipulated and agreed that the collector reliquidated the entries under section 4, paragraph Q, of the tariff act of October 3, 1913, and on so much

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of the yarn as remained in warehouse on October 4, 1913, he assessed duty at 15 per cent under paragraph 251, and also collected additional duties under section 3, paragraph I, of the tariff act of 1913 by reason of the higher value found by General Appraisers Fischer and Waite.

It is further stipulated and agreed that the protest may be submitted.

From this it is apparent that the entries were made under the act of 1909, which provides a specific rate of duty for merchandise of this character. They were withdrawn under the act of 1913, which provides an ad valorem rate of duty for such merchandise. The merchandise was advanced 6½ per cent above the entered value by a general appraiser. The collector assessed the ad valorem duty provided for in the act of 1913, and, insomuch as the appraised value exceeded the entered value, he applied the provisions of paragraph I and assessed additional duty in accordance therewith. The Court of Customs Appeals, in Sheldon & Co. *v.* United States (6 Ct. Cust. Appls., 516; T. D. 36143), held, in effect, that paragraph Q of subsection 2 of section 4, act of 1913, which provides that the duty in force at the time of withdrawal for consumption and issuance of permit of delivery shall be the duty to which such merchandise is subject, relates not to the amount of duty, but to the rate of duty, and that the entry of merchandise which was subject to a specific rate of duty, the value of which either upon entry or appraisement could not affect the amount of duty to be collected, was not such an entry to which the provisions of paragraph I would apply; further, that the phrase "duties imposed by law" in the additional duty paragraph related to the law in force at the time the entry was made and not to the law in force at the time the merchandise was withdrawn from warehouse and permit of delivery issued. The protest in this case is therefore sustained and the collector directed to reliquidate the entry accordingly.

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## (T. D. 36668.)

### *Common carrier.*

Rebonding of the Western Pacific Railroad Co. as a common carrier for the transportation of merchandise in bond and for the lading and unlading of dutiable goods.

TREASURY DEPARTMENT, *September 12, 1916.*

SIR: The department has received your letter of the 1st instant, with which was inclosed, in duplicate, bond of the Western Pacific Railroad Co. as a common carrier for the transportation of dutiable merchandise and for the lading and unlading of goods in bond under the act of February 13, 1911, said bond being in lieu of that of the receivers of said company approved November 6, 1915.

The new bond is approved and copy thereof inclosed herewith to be placed upon your files. The fact and date of the rebonding should be noted on the copy of the bond approved, as above stated, November 6, 1915, copy of which is on file in your office, and which should be retained without cancellation to meet any liability which may have accrued thereunder.

Respectfully, ANDREW J. PETERS,
(75617.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *San Francisco, Cal.*

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## (T. D. 36669.)

### *Lanolin—Adeps lanæ.*

Appeal directed from decision of the Board of United States General Appraisers of August 4, 1916, G. A. 7952 (T. D. 36613), involving the classification of certain adeps lanæ anhydrous.

TREASURY DEPARTMENT, *September 12, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 1st instant, relative to the decision of the Board of United States General Appraisers of August 4, 1916, G. A. 7952 (T. D. 36613), wherein certain adeps lanæ anhydrous, which it appears had been assessed with duty at the rate of 1 cent per pound as lanolin, under paragraph 44 of the tariff act of October 3, 1913, was held by the board to be dutiable at the rate of one-half cent per pound as wool grease refined, not specially provided for, under the same paragraph.

You are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the decision in question so far as it relates to the said adeps lanæ anhydrous, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(95342.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

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## (T. D. 36670.)

### *Agate collar buttons.*

Appeal from decision of the Board of United States General Appraisers of July 12, 1916, Abstract 39992, involving the classification of certain agate collar buttons, etc.

TREASURY DEPARTMENT, *September 14, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 7th instant, inviting attention to the decision of the Board of United States General Appraisers of July 12, 1916, Abstract 39992, involving the classification of certain agate collar buttons and combination collar and cuff buttons of metal and celluloid, or metal and bone.

The agate collar buttons had been assessed with duty at the rate of 40 per cent ad valorem as collar buttons composed wholly of agate under paragraph 339 of the tariff act of October 3, 1913, and the combination buttons at the same rate as buttons not specially provided for under the same paragraph, while the board held the agate collar buttons to be dutiable as agate buttons at the rate of 15 per cent ad valorem under the same paragraph and the com-

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bination buttons as metal buttons at the same rate of 15 per cent ad valorem under paragraph 151 of the said act.

Your action in filing, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909, is hereby approved.

Respectfully, ANDREW J. PETERS,
(102441.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

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(T. D. 36671.)

*Shortage allowance.*

Appeal directed from decision of the Board of United States General Appraisers, involving allowance for shortage in a case not ordered for examination by the appraiser.

TREASURY DEPARTMENT, *September 14, 1916.*

SIR: The department is in receipt of your letter of the 7th instant, recommending that an appeal be taken from the decision of the Board of General Appraisers, Abstract 40085, involving an allowance for shortage in a case not ordered for examination by the appraiser.

In view of your recommendation, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(105432.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

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(T. D. 36672.)

*Drawback on steel shells.*

Drawback on steel shells manufactured by the American Locomotive Co., of Dunkirk, N. Y., with the use of imported bar steel.

TREASURY DEPARTMENT, *September 14, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on steel shells manufactured by the American Locomotive Co., at Dunkirk, N. Y., with the use of imported bar steel.

The allowance shall not exceed the quantity of imported bar steel appearing in the exported steel shells plus an addition to compensate for waste incurred in boring, reaming, threading, turning, and polish-

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ing, as shown by the sworn statement of the manufacturers, dated June 22, 1916, transmitted herewith, the allowance to be reduced according to the quantity of imported material which the value of the waste will replace.

Drawback may be allowed under these regulations on the articles covered thereby exported on or after May 26, 1916.

Respectfully, ANDREW J. PETERS,
(55424.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36673.)

*Drawback on interior marblework, etc.*

Drawback on interior marblework, slabs polished or unpolished, carved and molded articles of marble or onyx manufactured by the Peoria Stone & Marble Works, of Peoria, Ill., with the use of imported rough marble and onyx blocks.—T. D. 17355 of August 1, 1896, revoked.

TREASURY DEPARTMENT, *September 15, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on interior marblework, slabs polished or unpolished, carved and molded articles of marble or onyx manufactured by the Peoria Stone & Marble Works, of Peoria, Ill., with the use of imported rough marble and onyx blocks.

A manufacturing record shall be kept, showing, in the case of each lot of marble or onyx manufactured for exportation with benefit of drawback, the job number and date of manufacture thereof, the identity of the imported marble and onyx used in its manufacture, the number of pieces of imported marble and onyx appearing therein, the dimensions of the several pieces of each kind of imported material, and, if an allowance to compensate for polishing and finishing waste is to be claimed, the number of polished and finished surfaces of each piece.

The quantities of imported marble and onyx which may be taken as a basis for the allowance of drawback shall not exceed the quantity appearing in the exported pieces, as shown by the abstract from the manufacturing record, plus an addition of one-eighth of an inch to the length, width, and thickness of each piece of imported marble and onyx to compensate for cutting, polishing, and finishing waste.

The sworn statement of the manufacturers, dated August 15, 1916, is transmitted herewith for filing in your office.

T. D. 17355 of August 1, 1896, is hereby revoked.

Respectfully, ANDREW J. PETERS,
(79800.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Chicago, Ill.*

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## (T. D. 36674.)

*Watch movements—Jewels.*

**The number of jewels marked on watch movements should include such jewels only as are actually serving some useful purpose in the operation of the movement.**

TREASURY DEPARTMENT, *September 15, 1916.*

SIR: The department refers to your letters of the 12th and 13th instant in regard to the release of watch movements, which are considered to be incorrectly marked as to the number of jewels.

You transmit a sample watch movement, which is marked "21 jewels," and invite attention to the fact that while there are 21 so-called jewels in the movement the "train jewels" are merely ornamental and do not in any manner add to the working efficiency of the movement.

Paragraph 161 of the existing tariff act provides that the movements and plates shall have marked thereon the number of jewels and adjustments. The department is of the opinion that it was the intention in enacting this provision of paragraph 161 to secure an accurate statement of the number of jewels actually serving some useful purpose in the operation of the movement, and not merely a statement of the number of jewels in the movement, some of which are placed therein for ornamental or other purposes not connected with the operation of such movement.

As it appears that the "train jewels" in the sample are merely ornamental and serve no useful purpose in the operation of the movement, the department is further of the opinion that the so-called jewels are not jewels within the meaning of paragraph 161 and should, therefore, not be included in the number marked on the movement. When, therefore, the number of jewels marked on the movement includes so-called jewels not useful in the efficient working of the movement such movement should not be released until the marking is changed to correctly indicate the actual number of jewels as herein defined.

As it appears, however, to have been the practice at your port to pass as properly marked movements when marked with a number which included so-called jewels not serving a useful purpose, you are hereby authorized to pass movements now detained marked in accordance with such practice, and such as are afloat or are now in the course of manufacture. Importers should be required to show to your satisfaction by affidavit or otherwise the shipments afloat and the movements now in the course of manufacture.

The sample movements are returned herewith.

Respectfully,
(68174-4.)

ANDREW J. PETERS,
*Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*



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## (T. D. 36675—G. A. 7958.)

### *Wool roving—Yarn.*

Roving or roving yarn which is slightly twisted but which is capable of further twisting or elongation and has not been on the spinning frame is not properly classified as a yarn under paragraph 287, act of 1913, but is roving or roping under paragraph 286.

United States General Appraisers, New York, September 15, 1916.

In the matter of protest 765871 of F. B. Vandegrift & Co. against the assessment of duty by the collector of customs at the port of Philadelphia.

[Reversed.]

*Peter Hackett* for the importers.

*Bert Hanson*, Assistant Attorney General (*Charles E. McNabb*, special attorney), for the United States.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers).

Brown, *General Appraiser:* This suit is brought to determine the proper classification of certain merchandise which is claimed to be rovings or ropings by the importers and to be wool yarn by the Government.

The collector classified the goods under paragraph 287 of the act of 1913, reading:

287. Yarns made wholly or in chief value of wool, 18 per centum ad valorem.

The provision under which the importers claim reads as follows:

286. Combed wool or tops and roving or roping made wholly or in part of wool or camel's hair, and on other wool and hair which have been advanced in any manner or by any process of manufacture beyond the washed or scoured condition, not specially provided for in this section, 8 per centum ad valorem.

At the trial three witnesses testified, two for the protestants and one for the Government.

The treasurer and general manager of the importing firm testified that they ordered the goods as rovings of 1 and 7/10 strands; that he had manufactured worsted yarns for about 15 or 20 years; that he generally purchased the wool itself, but from time to time when short or anticipating a shortage he purchased rovings in the United States and in foreign countries; that he sold worsted yarns throughout the United States in wholesale quantities; that the article in question would not be a good delivery for a worsted yarn.

He described the process of manufacture and illustrated it by samples introduced in evidence, saying:

If we bought the wool the next operation is to put it into a top. (Illustrative Exhibit A.)

We take the top and put it into the drawing room, and by about six or eight operations put it on a roving frame and make a roving out of it, like this. (Illustrative Exhibit B.)

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After we get the roving we take the roving off the roving frame and take it to the spinning frame, and after it is on the spinning frame it begins to be a yarn, and then it is put onto the worsted frame and is made into single-strand or two-ply or three-ply yarn, as the case may be; after it is put onto the worsted frame it becomes a yarn, but it is not a yarn until then.

He further said that the merchandise in question has never been on the spinning frame, and then introduced illustrative exhibits of a single-ply 40 (Exhibit C) and a two-ply 40 (Exhibit D) made out of a roving. Further, that the merchandise in suit was not suitable as yarn for knitting purposes and that he would not so sell it; that he did sell yarn for knitting; that there was only one way to make worsted yarn and the way he described it; that rovings were bought by weight and yarns by count of threads.

Mr. Ernest R. Townsend, called for the importers, said he had been engaged in the business of selling worsted yarns at wholesale in Philadelphia for about 14 years; that most of the worsted yarns are sold in Philadelphia, Boston, and New York. He said he would not sell the official sample as yarn; that the merchandise had not been made into yarn; that it was a partly manufactured product of a worsted mill and commercially and practically known as roving. When asked, on cross-examination, if he would sell the merchandise in question as a knitting yarn, he said he would not; that it was not practical for that purpose, because in running on a knitting machine for a few minutes it would choke up and stop and become tangled. He took the sample and pulled it out, showed how he could elongate it and bring it back, which he asserted could not be done with a yarn so as to bring it back in the same way; that when you attempt to do it with a yarn you break the fibers in doing it.

Mr. Charles L. Connelly, called for the defendant, said he was manager for William H. Brady & Co., manufacturers of woolen yarn at Philadelphia. When asked whether he would sell the merchandise in question as a yarn, he answered that some of his customers did buy it as a yarn; but when asked what most of his customers bought it as, said:

It depends a good deal upon the size; this is a pretty fine size of what we call a single; we sell various sizes, three and four times as heavy as this in singles; but it is sold in this shape to this particular trade as a yarn and under the yarn-count designation.

When asked on cross-examination if he would accept this as a good delivery for a roving, he answered:

A. If I were buying that for use in the mill; yes.
Q. As a roving?—A. Yes.

When asked:

Q. What would you do with this particular sample if you got it as a roving?

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He answered:

A. I would put it on a spinning frame and proceed to spin yarn out of it, or put it on a twisting frame and twist it into two ply without changing the original twist and size and sell it as a yarn.

This last seems to imply that it would require further process to make it into a yarn.

He could only define a roving as "wool in a certain stage of manufacture," and afterwards insisted that this was a yarn and claimed he would sell it as such to knitters only, and when sold to them it would be sold according to number and count.

Further, the testimony shows that the merchandise in controversy came off the roving frame, and the product of the roving frame would naturally and inevitably be roving.

Webster describes roving as "the operation of forming the roving or slightly twisted sliver of wool or cotton by means of a machine for the purpose, called a roving frame or roving machine."

This is the last step in the drawing process and the final step before spinning.

Prof. Roberts Beaumont, in his work on "Woolen and Worsted Manufacture," edited by H. Trueman Wood (1888), under the heading of "Worsted thread construction," describes roving as follows (page 89):

This is the last operation through which the slubbing passes before spinning. It may be defined as a combination of drawing and twisting, with an excess of *drawing*, while spinning is a combination of the same processes with an excess of *twisting*. In the roving box two of the thick slubbings from the preceding machine are combined and reduced in size, but increased in length, as in the drawing machines, the operation being the same, with the exception of imparting more twine to the soft thread formed.

And at the bottom of page 89, under the heading of "Worsted spinning"—

The spinning frame used in worsted-yarn manufacture differs very materially in construction from the mule. [The mule being previously described as part of the wool-thread manufacture as distinguished from the worsted-thread manufacture.] (Brackets ours.)

There is an important reason for this: It is not required to impart twist into the roving in the same manner as into the condensed sliver. As already pointed out, the roving contains a degree of twist and may correctly be called a spun thread. In the worsted-spinning frame, or throstle, the rollers are so arranged as to draw out the roving before any twist is furnished. Worsted-spinning machines are of three classes—flyer, cap, and ring. When the roving has been formed on the French principle, it is spun on an ordinary mule, giving really four methods of spinning worsted yarns.

The question turns, on the record as substantially outlined above, upon whether Congress intended in using the term "roving or roping" in paragraph 286 to include the article here in controversy.

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Assuming that this article should be called a roving yarn, having for some purposes the characteristics of roving and for others the characteristics of a yarn, and to that extent is both a yarn and a roving, it would seem to be more narrowly described by the term "roving" in paragraph 286 rather than under the more general term "yarn" in paragraph 287.

In the case of Stephenson & Co., G. A. 3270 (T. D. 16574), the board held that certain so-called roving yarns, which were incapable of further drawing, and therefore different in that respect from the merchandise in controversy, had ceased to be rovings and were dutiable as yarns under the act of 1894, which contained provisions for both yarns and roving. The board there found that when the single strands were so slightly twisted as to be capable of further elongation or drawing and twisting on a spinning frame or mule they were roving.

Upon the weight of the testimony in this record, and keeping in view the distinction made by the board in G. A. 3270, we find as a fact that the merchandise in controversy is a roving, and even if for some purposes, to wit, knitting, it is also a yarn, it is properly classifiable under the more specific provision for rovings in paragraph 286.

Judgment is rendered for the importers, sustaining the claim of the protest at 8 per cent under paragraph 286.

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## *Abstracts of decisions of the Board of General Appraisers.*

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*Board 1*—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

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BEFORE BOARD 1, SEPTEMBER 12, 1916.

**No. 40109.**—Protest 796115-58428 of John O. Notari & Co. (Chicago).

RUSCUS LEAVES.—Merchandise reported by the appraiser to be ruscus leaves chemically bleached, classified at 60 per cent ad valorem under paragraph 347, tariff act of 1913, is claimed free of duty as crude vegetable substances under paragraph 552, or dutiable as nonenumerated articles under paragraph 385.

Opinion by MCCLELLAND, G. A. On the authority of Abstract 39274 the ruscus leaves in question were held dutiable at 15 per cent under paragraph 385.

**No. 40110.**—Protest 751182 of Cowen Heineberg Co., protests 762018, etc., of C. J. Mitchell et al., and protests 797342, etc., of Southern Pacific Co. (Los Angeles and San Francisco).

SEA-GRASS FURNITURE.—Sea-grass furniture classified at 25 per cent ad valorem under paragraph 368, tariff act of 1913, is claimed dutiable at 15 per cent under paragraph 176.

Opinions by MCCLELLAND, G. A. The furniture in question was found to be similar to that passed upon in Abstract 39130. On the authority of that decision it was held dutiable under paragraph 176, as claimed.

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**No. 40111.**—Protest 772186 of Newark Tortoise Shell Novelty Co. (New York).

CELLULOID IN SHEETS.—Celluloid in sheets, classified at 40 per cent ad valorem under paragraph 25, tariff act of 1913, is claimed dutiable as not polished, at 25 per cent under the same paragraph.

Opinion by SULLIVAN, G. A. On the authority of United States *v.* Cohn (6 Ct. Cust. Appls., 426; T. D. 35979), affirming G. A. 7701 (T. D. 35245), the celluloid sheets in question were found to be not polished nor finished articles within the meaning of the last clause of paragraph 25 and were held dutiable at 25 per cent, as claimed.

**No. 40112.**—Protest 474226-36300 of Marshall Field & Co. (Chicago).

IMITATION JET BARRETTES.—Barrettes composed of black glass in imitation of jet, classified as jewelry at 60 per cent ad valorem under paragraph 448, tariff act of 1909, are claimed dutiable as manufactures of glass at 45 per cent under paragraph 109.

Opinion by SULLIVAN, G. A. The barrettes in question were held dutiable under paragraph 109, as claimed. G. A. 7019 (T. D. 30612), affirmed in United States *v.* Beierle (1 Ct. Cust. Appls., 457; T. D. 31506), followed.

**No. 40113.**—Protests 616643, etc., of Hensel, Bruckmann & Lorbacher (New York).

JEWELRY.—Jewelry classified at 85 per cent ad valorem is claimed dutiable at 60 per cent under paragraph 448, tariff act of 1909.

Opinion by SULLIVAN, G. A. On the authority of United States *v.* Cohn (3 Ct. Cust. Appls., 273; T. D. 32571) and Guthman *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536) the jewelry in question was held dutiable at 60 per cent under paragraph 448.

**No. 40114.**—Protest 802183 of J. Personeni (New York).

MEDICINAL PREPARATION.—Medicinal preparations put up in packages of less than 2½ pounds gross weight, classified at 20 per cent ad valorem under paragraph 17, tariff act of 1913, are claimed dutiable as nonenumerated manufactured articles at 15 per cent under paragraph 385.

Opinion by BROWN, G. A. The preparations in question were held properly classified under paragraph 17. Britt *v.* United States (7 Ct. Cust. Appls., —; T. D. 36428) followed.

**No. 40115.**—Protest 761651 of F. L. Kraemer & Co. (New York).

CARICA PAPAYA—MEDICINAL PREPARATION.—The appraiser reported the merchandise in question to consist of powdered carica papaya, having starch added as a constituent, made without the use of alcohol. It was classified as a medicinal compound at 15 per cent ad valorem under paragraph 5, tariff act of 1913, and is claimed dutiable as a drug, advanced, at 10 per cent under paragraph 27.

Opinion by BROWN, G. A. No evidence having been introduced to show that the commodity is not a medicinal preparation, the protest was overruled.

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BEFORE BOARD 2, SEPTEMBER 12, 1916.

**No. 40116.**—Protest 798129 of Ames-Bonner Co. (Cleveland).

ARTIFICIAL SILK YARN—SIMILITUDE.

HOWELL, *General Appraiser:* The merchandise in question was classified by the collector as "imitation horsehair yarn," and duty was assessed thereon at the rate of 35 per cent ad valorem under paragraph 319, tariff act of 1913, which paragraph reads as follows:

319. Yarns, threads, filaments of artificial or imitation silk, or of artificial or imitation horsehair, by whatever name known and by whatever process

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made, 35 per cent ad valorem; beltings, cords, tassels, ribbons, or other articles or fabrics composed wholly or in chief value of yarns, threads, filaments, or fibers of artificial or imitation silk or of artificial or imitation horsehair, or of yarns, threads, filaments or fibers of artificial or imitation silk, or of artificial or imitation horsehair and india rubber, by whatever name known, and by whatever process made, 60 per centum ad valorem.

The importers claim that the merchandise is dutiable by similitude to bristles at the rate of 7 cents per pound, under the provisions of paragraphs 337 and 386 of said act, or, in the alternative, that it is dutiable at 20 cents per pound under paragraph 311 of said act. The paragraphs relied on by the importers read as follows:

337. Bristles, sorted, bunched, or prepared, 7 cents per pound.

386. That each and every imported article, not enumerated in this section, which is similar, either in material, quality, texture, or the use to which it may be applied, to any article enumerated in this section as chargeable with duty, shall pay the same rate of duty which is levied on the enumerated article which it most resembles in any of the particulars before mentioned; and if any nonenumerated article equally resembles two or more enumerated articles on which different rates of duty are chargeable, there shall be levied on such nonenumerated article the same rate of duty as is chargeable on the article which it resembles paying the highest rate of duty; and on articles not enumerated, manufactured of two or more materials, the duty shall be assessed at the highest rate at which the same would be chargeable if composed wholly of the component material thereof of chief value; and the words "component material of chief value," wherever used in this section, shall be held to mean that component material which shall exceed in value any other single component material of the article; and the value of each component material shall be determined by the ascertained value of such material in its condition as found in the article. If two or more rates of duty shall be applicable to any imported article, it shall pay duty at the highest of such rates.

311. Silk partially manufactured from cocoons or from waste silk and not further advanced or manufactured than carded or combed silk, and silk noils exceeding two inches in length, 20 cents per pound.

If the article is enumerated it can not be classified by similitude, for the reason that the similitude provision (par. 386) applies only to imported merchandise which is not enumerated in the tariff act. It is quite apparent from the language adopted in paragraph 319 that Congress recognized that at the time of the enactment of the provision there existed in trade and commerce an article known as "artificial or imitation horsehair," which is produced in various forms and by different processes. The article here in question has been classified as an "imitation horsehair yarn," and an inspection of the sample in evidence would indicate that it is in fact an imitation of horsehair. The difficulty which the board encounters with the present record is the entire absence therefrom of any testimony tending to show how the article is known in the trade and commerce of this country or by what process it is manufactured or of what material it is composed. It is true that it is described in the invoice as "imitation bristles partially manufactured from cocoons or waste silk," but the invoice description can not be allowed to control the classification of the merchandise. Dwight *v.* Merritt (140 U. S., 213).

The only oral testimony in the case is that of the secretary of the importing company, who testified that he has been handling this class of merchandise for four or five months; that he is not personally familiar with the method of its manufacture, but that it is used by his company for mixing with bristles in the making of hair brushes. He further testified that his company used natural horsehair in the making of brushes, and said that it was used to cheapen the mixture devoted to the manufacture of the brushes, whereas the material here in question is used for the purpose of stiffening the bristles used in the brushes. All of this testimony has reference to the use of the article by the importing

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company after importation and does not enlighten us as to what the article is in its condition as imported. The fact that it is used as bristles are used in making brushes does not justify its classification by similitude to bristles if it is in fact an artificial or imitation horsehair, for the reason that artificial or imitation horsehair is specially provided for without any limitation as to the uses to which it may be devoted after importation. Paragraph 319 is comprehensive and appears to have been drawn with a view to including within its provisions all the various forms of artificial or imitation silk or artificial or imitation horsehair.

As already stated, an examination of the sample in evidence tends to support the classification of the article as an imitation of horsehair, and the testimony shows that it is used for one of the purposes for which natural horsehair is used. It is imported in lengths of about 33 inches, and if it be suggested that in these short lengths it is not to be classified as a yarn, then it would seem to be dutiable as a filament of artificial or imitation horsehair, which is provided for in the same paragraph at the same rate of duty.

The protest is overruled.

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BEFORE BOARD 3, SEPTEMBER 12, 1916.

**No. 40117.**—Protest 791462 of Germania Importing Co. (New York).

SHIP'S EQUIPMENT.

HAY, *General Appraiser:* The merchandise which is the subject of this protest is linoleum assessed for duty under the appropriate paragraph of the act of 1913 and claimed to be free of duty under subsection 5 or subsection 6 of paragraph J, section 4. These provisions of law read as follows:

J. Subsection 5. That all materials of foreign production, which may be necessary for the construction of naval vessels or other vessels of the United States, vessels built in the United States for foreign account and ownership, or for the purpose of being employed in the foreign or domestic trade, and all such materials necessary for the building of their machinery, and all articles necessary for their outfit and equipment, may be imported in bond under such regulations as the Secretary of the Treasury may prescribe; and upon proof that such materials have been used for such purposes no duties shall be paid thereon.

J. Subsection 6. That all articles of foreign production needed for the repair of naval vessels of, or other vessels owned or used by, the United States and vessels now or hereafter registered under the laws of the United States may be withdrawn from bonded warehouses free of duty, under such regulations as the Secretary of the Treasury may prescribe.

The case came up originally upon an interlocutory motion which was denied by the board, and to which protestant was given an exception of which he may take advantage upon the record if he so desires, but in the subsequent proceedings in the case any advantage that he may have derived from the granting of that exception has been supplied by a stipulation. The case is submitted upon the following stipulation, together with such facts as are revealed by the papers forwarded by the collector:

It is hereby stipulated between the Assistant Attorney General and counsel for the importer that 95 per cent of the linoleum in question, delivered at the United States Navy Yard, New York, under the Snellenburg contract, No. 18731, was used upon vessels belonging to the United States Government, and that 5 per cent thereof was used in various buildings at navy yards and naval stations.

That such of the linoleum as was so used on such vessels was used solely as deck covering; that is, to cover iron or steel decks in such places where the deck is not exposed to the weather, as in officers' mess rooms, crew's messing spaces, officers' staterooms, etc.

That all of the linoleum delivered under said Snellenburg contract was used upon vessels after they had been placed in service; that is, none of it was used on newly constructed vessels.

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This stipulation is made by the Assistant Attorney General pursuant to information received by him from the supply officer at said navy yard.

The protest is submitted for decision upon this stipulation and all the papers in the case, in so far as they are relevant and material evidence.

From this stipulation it is apparent that 95 per cent of the linoleum in question was used in the repair of vessels owned by the United States. It was the clear intention of subsection 6 that all merchandise so used should be admitted free of duty. See Kennedy & Moon's case, G. A. 7841 (T. D. 36078). The papers, as submitted by the collector, disclose that the protestant in making application for free entry referred to the Panama Canal act, but the record also shows that a bond was given and that the merchandise was duly withdrawn from bond. The record further shows, indorsed upon the invoice, "free of duty, to go to Brooklyn Navy Yard," but, as shown by the collector's letter, free entry was denied because of the failure to comply with certain rules with reference to the production of certificates. (See T. D. 34150.) Regulations similar to these were held to be unreasonable in W. G. Sickel's case, G. A. 7639 (T. D. 34925), in that it was without the power of the beneficiary of the law to comply with the regulations, and the record in the case at bar shows that the protestant could not comply with these regulations because he was unable to get the certificate required from the proper Government officer. The stipulation, we think, covers that so far as 95 per cent of the linoleum is concerned.

The point is raised by the Assistant Attorney General that the application for free entry was not made under the correct provision of law. It is apparent from the following excerpt from the collector's letter that he was not in any way misled by the use of the wrong blank:

The merchandise in question consists of linoleum entered free of duty under paragraph J, subsection 5, section 4 of the act of 1913, and bond given for the production of a certificate showing the merchandise was used for the outfit and equipment of a United States vessel.

Furthermore, the purpose to be accomplished by the bond provided for in subsection 5 of paragraph J was accomplished by the bond given and canceled by the collector. Insomuch as the stipulation shows that 95 per cent of the linoleum was used in the repair of naval vessels, the protest is sustained as to 95 per cent and the collector directed to reliquidate the entry accordingly.

**No. 40118.**—Protest 799537 of Lunham & Moore (New York).

PRO FORMA INVOICE—DEPRECIATED CURRENCY.—It is claimed here that duty should have been assessed upon the value of certain oil, as stated in the consular invoice, rather than upon the value given in the pro forma invoice. It is also claimed that the liquidated value is too high owing to a depreciation of currency in Mexico.

Opinion by HAY, G. A. It was found from the papers that the entry was liquidated upon the proclaimed value of the foreign currency and that no certificate of depreciation was filed. Protest overruled.

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BEFORE BOARD 1, SEPTEMBER 15, 1916.

**No. 40119.**—Protest 802758 of C. H. Demarest (New York).

GRASS TWISTED TOGETHER—MANUFACTURES OF GRASS.

MCCLELLAND, *General Appraiser:* The invoice describes the merchandise in question as "straw and grass, manufactures of—34 bales sea grass." The special report of the appraiser on the protest states that the merchandise consists of sea grass in a braided form, used in the manufacture of baskets.

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It was assessed with duty at the rate of 25 per cent ad valorem under paragraph 368 of the tariff act of 1913. Claims in the protest are made for free entry under paragraph 552, and for 10 and 15 per cent ad valorem under paragraphs 372 and 385 of said act.

The official sample (Exhibit 1), representing the importation, consists of several strands of grass twisted together into the form of a cord. There was but a single witness produced at the hearing, and he was called on behalf of the importer. The extent of his knowledge, in so far as this article is concerned, as disclosed by his testimony, is that in its imported condition the merchandise is used in the manufacture of so-called grass furniture and baby carriages. He has never heard it called by any other name than sea grass. The Government offers nothing in support of its classification, but this was unnecessary, unless the evidence for the importer is sufficient to overcome the presumption of correctness which attaches to the collector's action.

The query is, Is the grass so transformed by processes of manufacture as to fit it for a distinct use to which in its original state it could not be adapted?

Paragraph 368, under which duty was assessed, provides for manufactures of grass. Paragraph 372, one of the paragraphs under which claim is made, provides for sea grass, manufactured. In his meager testimony on behalf of the importer the witness states that the merchandise in so far as his experience goes has always been sold under the name of sea grass; but this is not sufficient to warrant a reversal of the collector's classification.

The sample in evidence has been spun or twisted into the form of a cord, which concededly fits it for use in the making of grass furniture and baby carriages. It may be readily assumed that sea grass in its natural condition could not be applied to either of these uses. In Abstract 39205 we held that braided grass was no longer sea grass, but a manufacture of grass, and by the same line of reasoning we must reach a like conclusion as to the merchandise in question. The protest is therefore overruled and the decision of the collector affirmed.

**No. 40120.**—Protest 802491 of Bradshaw Bros. (St. Paul).

ARTIFICIAL FLOWERS.—Artificial flowers and other articles apparently made of straw, classified at 60 per cent ad valorem under paragraphs 358 and 347, tariff act of 1913, are claimed dutiable as manufactures of straw at 25 per cent under paragraph 368.

Opinion by MCCLELLAND, G. A. Protest unsupported; overruled.

**No. 40121.**—Protest 798750 of John Campbell & Co. (New York).

ORCHIL.—Merchandise invoiced as "Archil Liquor," returned by the appraiser as extracts of vegetable origin used for coloring and classified at three-eighths of 1 cent per pound under paragraph 30, tariff act of 1913, is claimed entitled to free entry under the provision for "orchil, or orchil liquid," in paragraph 564.

Opinion by MCCLELLAND, G. A. On the authority of G. A. 7607 (T. D. 34817) the merchandise in question was held entitled to free entry under paragraph 564.

**No. 40122.**—Protest 797979 of J. T. Steeb & Co. (Seattle).

BASKETS—TOYS.—The appraiser reports that the merchandise consists of baskets composed of bamboo and chip, with cotton chicks and cotton birds attached. They were classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, and are claimed dutiable as baskets at 25 per cent under paragraph 175.

Opinion by MCCLELLAND, G. A. The articles in question were found to be similar to those which were passed upon in G. A. 7790 (T. D. 35796). In harmony with that decision they were held dutiable as baskets under paragraph 175.

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**No. 40123.**—Protest 797248 of Butler Bros. (Galveston).

GLASS ARTICLES.—Articles classified as artificial flowers at 60 per cent ad valorem under paragraph 347, tariff act of 1913, are claimed dutiable as glass articles at 45 per cent under paragraph 84, or as manufactures of glass at 30 per cent under paragraph 95.

Opinion by MCCLELLAND, G. A. The claim under paragraph 84 was sustained.

**No. 40124.**—Protests 780050, etc., of Oelschlaeger Bros. (New York).

PEDOMETERS—COMPASSES.—Pocket compasses and pedometers classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. On the authority of G. A. 7824 (T. D. 35949) and United States *v.* Sussfeld (7 Ct. Cust. Appls., —; T. D. 36454), the pocket compasses and pedometers in question were held dutiable under paragraph 167.

**No. 40125.**—Protest 780038 of Dingelstedt & Co. (New York).

ROTAMETERS—COMPASSES.—Rotameters and compasses classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. Upon stipulation of counsel the articles in question were held dutiable under paragraph 167. Abstracts 39074 and 39088 followed.

**No. 40126.**—Protests 685664, etc., of Hensel, Bruckmann & Lorbacher (New York.

COMPASS WATCH CHARMS.—Ordinary compasses designed to be set into charms, classified at 75 per cent ad valorem under paragraph 448, tariff act of 1909, are claimed dutiable as parts of jewelry at 60 per cent under the same paragraph.

Opinion by SULLIVAN, G. A. The compass watch charms in question were held dutiable as parts of jewelry at 60 per cent under paragraph 448. Sussfeld *v.* United States (5 Ct. Cust. Appls., 565; T. D. 35021), reversing Abstract 35969 (T. D. 34604) and Abstract 36151 (T. D. 34668), followed.

**No. 40127.**—Protest 775306 of Knauth, Nachod & Kuhne (New York).

COLLAPSIBLE METAL DRINKING CUPS.—Collapsible metal drinking cups in leather cases, the inside of the cups plated with gold, classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of metal under paragraph 167.

Opinion by SULLIVAN, G. A. The inside of the cups being plated with gold, the articles were held dutiable at 50 per cent under paragraph 167. Abstract 38700 followed.

**No. 40128.**—Protest 765837-53694 of Marshall Field & Co. (Chicago).

BEADED ORNAMENTS AND TRIMMINGS.—Ornaments and trimmings composed of cotton net or threads and beads, classified as appliquéd articles at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as articles in chief value of beads at 50 per cent under paragraph 333, or as manufactures in chief value glass or paste at 30 per cent under paragraph 95.

Opinion by SULLIVAN, G. A. Ornaments of cotton appliquéd with beads were held excluded from paragraph 333. Loewenthal *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464) cited. On the authority of G. A. 7897 (T. D. 36362) they were found dutiable according to the component material of chief value in the beads. No proof having been offered as to this component material, the protest was overruled.

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**No. 40129.**—Protests 746443-51183, etc., of Mosaic Shade Co. et al. (Chicago).

LAMP FRINGES—BEADED ARTICLES.—Lamp-shade fringes composed of white and colored glass beads, glass tubes, and glass bell-shaped ornaments, strung on cotton threads, classified as articles in chief value of beads at 50 per cent ad valorem under paragraph 333, tariff act of 1913, are claimed dutiable as manufactures of beads at 30 per cent under paragraph 95, or as articles of colored glass at 45 per cent under paragraph 84.

Opinion by SULLIVAN, G. A. No proof having been offered as to the material of chief value, protests overruled.

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BEFORE BOARD 2, SEPTEMBER 15, 1916.

**No. 40180.**—Protest 769508 of Dost & Brandt (New York).

UMBRELLA TASSELS—TRIMMINGS.

HOWELL, *General Appraiser:* In his special report, which has been made a part of the record in this case, the appraiser states:

The merchandise consists of so-called tassels—trimmings for men's umbrellas—composed of wood covered with cotton and attached to a loop of cotton braid, cotton chief value, returned for duty as trimmings, at 60 per cent ad valorem, paragraph 358, act of 1913. Abstract 32173 (T. D. 33389) sustains this action.

The collector reports that the appraiser's advisory classification was adopted by him, and the merchandise was accordingly classified as trimmings dutiable at 60 per cent ad valorem under paragraph 358, tariff act of 1913. It is claimed to be dutiable as "tassels" at the rate of 25 per cent ad valorem under paragraph 262 of said act.

The sample in evidence consists of a loop of cotton braid measuring about 7 inches in length, to each end of which is attached a small wooden mold covered with cotton. The completed article is the familiar ornament almost universally used on men's umbrellas. The uncontradicted evidence is to the effect that the article, as imported, always has been recognized in the wholesale trade and commerce of this country as a "tassel." Tassels composed in chief value of cotton are denominatively provided for in paragraph 262. It having been established that the article here in question is a tassel, and that it is composed in chief value of cotton, it would seem to be dutiable under paragraph 262, as claimed in the protest. Bischoff's case, Abstract 32173 (T. D. 33389), to which the appraiser refers, arose under the tariff act of 1909, the provisions of which, with respect to this class of merchandise, were materially different, and therefore the decision in that case can have no application here.

The protest is sustained.

**No. 40181.**—Protests 765990, etc., of Rudolf Saenger Co. (New York).

APPLIQUÉD FABRICS.—Dress trimmings and chiffon having paste dots on the surface of the fabrics, classified as appliquéd at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as manufactures of silk at 45 per cent under paragraph 318, at 50 per cent under paragraph 333, or at 40 per cent under paragraph 150.

Opinion by COOPER, G. A. On the authority of Abstract 38293 the fabrics in question were held properly classified as silk, appliquéd, under paragraph 358.

**No. 40182.**—Protest 767256 of Kennedy & Moon (New York).

TUCKINGS.—The appraiser reports the merchandise in question to be cotton dress goods ornamented with loom-woven tucks. It was classified as cotton

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tuckings at 60 per cent ad valorem under paragraph 358, and is claimed dutiable as cotton articles of wearing apparel at 30 per cent under paragraph 256.

Opinion by COOPER, G. A. There being no testimony to show that the merchandise is wearing apparel and not dress goods, it was held properly classified under paragraph 358.

**No. 40133.**—Protest 776208 of Schuneman & Evans (St. Paul).

DOTTED SWISS—COTTON CLOTH.—Dotted and figured swisses classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913, are claimed dutiable as cotton cloth under paragraph 252.

Opinion by COOPER, G. A. The merchandise in question was held dutiable at the appropriate rate according to the average number of yarn in the cloth under paragraph 252. G. A. 7904 (T. D. 36386) followed.

**No. 40134.**—Protest 782097 of Kennedy & Moon (New York).

TUCKED WEARING APPAREL.—Articles made in whole or in part of tuckings, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as clothing or articles of wearing apparel at 30 per cent under paragraph 256.

Opinion by COOPER, G. A. Merchandise found to consist of tucked shirt bosoms was held dutiable as wearing apparel at 30 per cent under paragraph 256. United States *v.* Snow's United States Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388), affirming G. A. 7613 (T. D. 34823), followed.

**No. 40135.**—Protest 785981 of Cheney Bros. (Bridgeport).

COTTON YARN.—The question here is as to the number of certain cotton yarn classified by the appraiser as No. 80 at 24 cents per pound, and claimed to be No. 78, dutiable at 19½ cents per pound under paragraph 313, tariff act of 1909.

Opinion by COOPER, G. A. Protest unsupported; overruled.

**No. 40136.**—Protest 787037 of Eaton, Schleich & Woll (New York).

VEGETABLE FIBER.—Merchandise classified as Tampico fiber by similitude, at 20 per cent ad valorem under paragraph 285, tariff act of 1913, is claimed dutiable as nonenumerated articles at 15 per cent under paragraph 385, or free of duty under paragraph 497.

Opinion by COOPER, G. A. The merchandise was found to be vegetable fiber cut into uniform lengths, dressed, dyed, and bunched. It was held dutiable as a nonenumerated manufactured article under paragraph 385. United States *v.* Osborn (6 Ct. Cust. Appls., 276; T. D. 35504) followed.

**No. 40137.**—Protest 788727 of T. D. Downing Co. (Boston).

COTTON CORD.—Merchandise classified as cotton cord at 25 per cent ad valorem under paragraph 262, tariff act of 1913, is claimed dutiable under paragraph 250 or 251.

Opinion by COOPER, G. A. It was found that the merchandise is used to make loom harness and that it is called cable cord or cable twine, but there was not sufficient in the record to warrant a reversal of the collector's action. Protest overruled.

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BEFORE BOARD 3, SEPTEMBER 15, 1916.

**No. 40138.**—Protest 802256-7041 of Wheelock, Lovejoy & Co. (New Orleans).

CLERICAL ERROR.—It is claimed in this case that through an oversight certain items of insurance and other nondutiable charges were entered as a part of the market value.

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Opinion by HAY, G. A. The collector assessed duty upon the entered value, and an examination of the papers that were before the collector at the time of liquidation discloses no manifest clerical error. Protest overruled. G. A. 7476 (T. D. 33590) and G. A. 7858 (T. D. 36167) cited.

No. 40189.—Protests 781830, etc., of A. J. Spiller et al. (Buffalo, etc.).

TEA COVERINGS.—Certain coverings of tea are claimed entitled to free entry under paragraph 627.

Opinion by HAY, G. A. Upon stipulation of counsel certain of the coverings were held free of duty under paragraph 627. Wright *v.* United States (6 Ct. Cust. Appls., 528; T. D. 36147) followed. Protests sustained in part.

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## (T. D. 36676.)

### *Drawback on ribbon gold leaf.*

Drawback on ribbon gold leaf manufactured by the W. H. Coe Manufacturing Co., of Providence, R. I., with the use of imported gold leaf. Prior rates of drawback revoked.

TREASURY DEPARTMENT, *September 19, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on ribbon gold leaf manufactured by the W. H. Coe Manufacturing Co., of Providence, R. I., with the use of imported gold leaf.

A manufacturing record shall be kept, which will show, in the case of each roll of ribbon gold leaf manufactured for exportation with benefit of drawback, the length and width of the original roll and the number, identity, value, length, and width of the imported gold leaves appearing therein. Where such original rolls are divided into rolls smaller in width the records shall also show the number of rolls produced, the width thereof, and the gross quantity of sawing and trimming waste resulting. A sworn abstract from such manufacturing record shall be filed with the drawback entry, and such abstract shall show, in addition to the above data, the total gross sawing and trimming waste resulting in the manufacture of all ribbon gold leaf during the period of manufacture, which shall not exceed six months in duration, in which the exported ribbon gold leaf was produced, the quantity and value of such waste recovered, and the net amount of absolute loss.

The quantity of imported gold leaf which may be taken as a basis for the allowance of drawback may equal the quantity used in the manufacture of the exported ribbon gold leaf, less the quantity which the value of the waste, predicated on the percentage of recovery from all waste during the period of manufacture, will replace.

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The sworn statements of the manufacturers, dated June 23 and September 7, 1916, are transmitted herewith for the files of your office.

T. D. 35945 of December 6, 1915, and all other prior regulations granting drawback on ribbon gold leaf manufactured by the W. H. Coe Manufacturing Co. are hereby revoked.

Respectfully, ANDREW J. PETERS,
(104333.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

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(T. D. 36677.)

*Drawback on flour and by-products.*

**Drawback on flour and by-products of wheat manufactured by the Duluth-Superior Milling Co., of Duluth, Minn., in whole or in part with the use of imported wheat.—T. D. 25949 of January 1, 1905, and T. D. 26025 of February 4, 1905, revoked.**

TREASURY DEPARTMENT, *September 19, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on flour and on bran, red dog, shorts, and similar by-products manufactured by the Duluth-Superior Milling Co., of Duluth, Minn., with the use of wholly imported wheat or with the use of imported wheat in combination with domestic wheat.

Manufacturing records shall be kept in the manner indicated by the sworn statement of the manufacturers, dated September 8, 1916, transmitted herewith, showing, in the case of each lot or run of flour manufactured for exportation with benefit of drawback, the lot or run number thereof; the first and last dates of manufacture; the quantity, value, and identity of imported wheat (uncleaned); and the quantity and value of domestic wheat (uncleaned) used; the quantity and value of each grade of flour and of bran, red dog, shorts, and similar by-products, respectively, obtained; and the quantity and value of each kind of wastage resulting. A sworn abstract from such manufacturing record and certificate of manufacture, in the form prescribed in the general drawback regulations, covering each export lot or run, shall be filed with the collector of customs at New York, together with all evidences of importation, delivery, etc., required by the regulations. After liquidation of the certificate of manufacture extracts therefrom will, upon proper request, be issued by the collector at New York for use at other ports.

In liquidation, the quantity of imported material which may be taken as a basis for the allowance of drawback may equal the quan-

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tity, including dockage, used, less the quantity which the value of the waste will replace, as shown by the abstract from the manufacturing record. The duties paid on the imported materials used shall be distributed between the principal products and by-products according to their relative values, provided the drawback thus accruing to the by-products does not exceed that authorized by the drawback law, in which event the drawback distributed to the by-products shall be limited as provided in T. D. 33809 of October 25, 1913, and the residue of the duties shall be distributed between the principal products according to their relative values.

These regulations shall be effective as to the products covered thereby manufactured on or after 30 days from the date hereof, and drawback shall not be allowed under T. D. 25949 of January 11, 1905, or T. D. 26025 of February 4, 1905, on such products of the Duluth-Superior Milling Co. manufactured thereafter.

Respectfully, ANDREW J. PETERS,
(61701.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36678.)

*Rosaries in chief value of beads—Beaded articles.*

Rosaries in chief value of beads, when not included in paragraph 356, tariff act of 1913, dutiable at the rate of 50 per cent ad valorem as articles in chief value of beads under paragraph 333 of the said act.

TREASURY DEPARTMENT, *September 18, 1916.*

SIR: The department duly received your letter of the 5th ultimo, relative to a change in the practice in the classification of rosaries in chief value of beads.

It appears that rosaries, not jewelry nor metal articles designed to be worn on apparel or carried on or about or attached to the person, have been assessed with duty according to the component material of chief value, in accordance with T. D. 34019, and it is proposed to change the classification of such merchandise in chief value of beads to that of beaded articles under paragraph 333 of the tariff act of 1913.

In T. D. 36259, relative to necklaces of beads, the Court of Customs Appeals said that the provisions of "paragraph 333 of the act of 1913, providing for beads and beaded articles, is enlarged beyond its predecessor paragraph 421 of the act of 1909," and also stated that "the court views that it (par. 333) was intended as an exhaustive provision as to its subject matter, (1) beads and spangles, and (2) articles composed wholly and in chief value of beads and spangles, only

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to be invaded by some other clearly and more specifically expressed intention of Congress."

The department therefore concurs in the proposed change in practice, and you will assess duty on rosaries in chief value of beads when not included in the provisions of paragraph 356 (T. D. 36456 and T. D. 36493) imported or withdrawn from warehouse 30 days after the date hereof, at the rate of 50 per cent ad valorem as articles in chief value of beads under paragraph 333 of the tariff act of 1913.

Respectfully, ANDREW J. PETERS,
(93783.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36679.)

*Drawback on hats.*

Drawback on finished straw hats manufactured by the Knox Hat Co. (Inc.), of New York, N. Y., with the use of imported braid.

TREASURY DEPARTMENT, *September 21, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on finished straw hats manufactured by the Knox Hat Co. (Inc.), of New York, N. Y., with the use of imported straw braids (not bleached, dyed, colored, or stained).

A manufacturing record shall be kept in the manner described in the sworn statements of William Randall & Sons, of Brooklyn, N. Y., and the R. H. Comey Co., of Camden, N. J., which firms bleach or dye the braids, heretofore filed in your office, and in accordance with the sworn statement of the manufacturers, dated September 12, 1916, transmitted herewith for filing in your office, which will show, in addition to the usual import data in the case of each lot of hats manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the number of hats of each style and size produced, and the quantity and identity of the imported material used. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported material used in the manufacture of the exported hats, as shown by the abstract from the manufacturing record.

Drawback may be allowed under these regulations on hats exported on and after June 6, 1916.

Respectfully, BYRON R. NEWTON,
(100877-13.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*



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(T. D. 36680.)

*Drawback on water bags.*

**Drawback on water bags manufactured by the Hirsch-Weis Manufacturing Co., of Portland, Oreg., with the use of imported flax convas.**

TREASURY DEPARTMENT, *September 21, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on water bags manufactured by the Hirsch-Weis Manufacturing Co., of Portland, Oreg., with the use of imported flax canvas.

A manufacturing record shall be kept in accordance with the sworn statements of the manufacturers, dated July 18 and August 25, 1916, which are transmitted herewith for filing in your office, which will show, in addition to the usual import data in the case of each lot of bags manfactured for export with benefit of drawback, the lot number and date of manufacture thereof, the quantity and identify of the imported flax canvas used, the number of bags produced, the dimensions of the bags, and the quantity of imported material appearing therein. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported flax canvas appearing in the exported bags, as shown by the abstract from the manufacturing record.

Drawback may be allowed under these regulations on bags exported on and after May 22, 1916.

Respectfully, BYRON R. NEWTON,
(105042.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Portland, Oreg.*

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(T. D. 36681.)

*Immediate transportation ports.*

**Merchandise may be forwarded to Oakland, Cal., under immediate transportation entries as of the port of San Francisco.**

TREASURY DEPARTMENT, *September 21, 1916.*

SIR: In reply to your letter of the 8th instant, relative to forwarding merchandise to Oakland, Cal., under immediate transportation entries, I have to advise you that inasmuch as the reorganization plan of March 3, 1913, made Oakland a part of the port of San Francisco, merchandise may be forwarded direct to Oakland under imme-

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diate transportation entries. In such cases Oakland should be shown on the I. T. entry as the destination.

Respectfully, BYRON R. NEWTON,
(90740-28.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *San Francisco, Cal.*

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(T. D. 36682.)

*Drawback on rum and alcohol.*

Drawback on rum and alcohol manufactured by the Everett Distilling Co., of Everett, Mass., in whole or in part with the use of imported molasses and other saccharine materials. Department's instructions of August 11, 1899, revoked.

TREASURY DEPARTMENT, *September 25, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on rum and alcohol manufactured by the Everett Distilling Co., of Everett, Mass., wholly with the use of imported molasses and other saccharine materials or with the use of such imported materials in combination with similar domestic materials.

A manufacturing record shall be kept in the manner described in the sworn statements of the manufacturers, dated May 23 and August 18, 1916, transmitted herewith, which will show, in the case of each lot of rum or alcohol manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity and identity of each kind of imported saccharine material, and the quantity of each kind of domestic saccharine material used, the actual quantity and proof of the rum or alcohol produced therefrom, and the quantity and value of the waste resulting. Such record shall also show as to each kind of imported saccharine material and as to the domestic saccharine material used, the fermentable sugar content thereof and the theoretical yield of rum or alcohol therefrom. An abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported saccharine material used in the manufacture of the exported rum or alcohol, the allowance to be reduced according to the quantity of imported material which the value of the waste will replace.

The department's instructions of August 11, 1899 (7998), are hereby revoked as to products of the Everett Distilling Co.

Respectfully, ANDREW J. PETERS,
(97904.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

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(T. D. 36683.)

*Drawback on rivets.*

Drawback on rivets manufactured by Cobb & Drew (Inc.), of Plymouth, Mass., from rivets manufactured from imported iron and steel wire rods.—T. D. 17355 of August 1, 1896, revoked.

TREASURY DEPARTMENT, *September 25, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on rivets manufactured by Cobb & Drew (Inc.), of Plymouth, Mass., with the use of imported iron and steel wire rods.

A manufacturing record shall be kept in accordance with the sworn statement of the manufacturers, dated August 25, 1916, transmitted herewith, showing, in the case of each lot of rivets manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity, value, and identity of the imported steel or iron rods used, the quantity of rivets of each size produced, the net weight thereof, and the quantity and value of the waste resulting. A sworn abstract from such record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported iron or steel wire rods used in the manufacture of the exported rivets, as shown by the abstract from the manufacturing record, less the quantity of imported rods which the value of the waste will replace.

T. D. 17355 of August 1, 1896, is hereby revoked.

Respectfully, ANDREW J. PETERS,
(105441.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

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(T. D. 36684.)

*C. V. R. reports.*

Instructions to appraising officers relative to the use of C. V. R. reports.

TREASURY DEPARTMENT, *September 25, 1916.*

SIR: In accordance with your recommendation of August 25, C. V. R. report cards, Cat. No. 6431 A, B, and C, are hereby discontinued and a new form of report, to be known as 6431A, and an extension sheet, to be known as 6431B, substituted therefor.

Appraising officers will submit all questions concerning values on the new form, which will be supplied by the C. V. R. Bureau until the new forms are printed, when they will be furnished by the department upon requisition.

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All C. V. R. reports should be made out in triplicate (an original and two carbons), and should be typewritten whenever possible.

Invoices should not be submitted to the C. V. R. Bureau except when value information is required on all or a large percentage of the items on the invoice. In many instances a fair percentage of items extracted and placed upon the report will answer the purpose. When invoices are submitted they should be attached to the C. V. R. report (original and two carbons), stating in the price space the fact that the invoice is attached and the request for information in regard to value.

Copies of orders should be attached to C. V. R. reports (original and two carbons), with the statement in the price space on the report, "Copies of orders are attached." It is desired that the C. V. R. Bureau retain all copies of orders received. If for any reason a copy of order must be returned, request for its return should appear upon the C. V. R. report.

Questions of classification where value is not involved should be submitted, when practicable, by C. V. R. report.

Particular attention is called to the request upon the C. V. R. report for the reasons for the appraiser's advance, and also for the reasons for importer's changes in invoice value at the time of entry.

When samples are forwarded, the C. V. R. report relating to the samples should be placed in the package containing the samples.

Attention is drawn to the date of purchase upon the C. V. R. report. This date should be taken from the invoice and when not indicated thereon the C. V. R. Bureau should be communicated with in order that the American consul may be instructed to have all necessary facts shown on invoices, under T. D. 34542, amending the consular regulations. Care should be taken to distinguish between the date of certification, or the date that the invoice is made out, and the date of purchase.

Whenever invoices are received on which the merchandise is not properly described, as provided for in paragraph C of section 3, or the invoice is not the proper form, as provided for in paragraphs D and W of section 3, you will communicate with the appraiser at New York in order that the American consul may be requested to have corrections made in invoices for future shipments.

Headquarters ports are instructed to forward to the C. V. R. Bureau reports on all commodities received that have not been reported upon since September 1, 1916.

Other ports are instructed to send to the C. V. R. Bureau reports on all commodities imported for the six months following the date of these instructions.

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Reports should cover only one class of merchandise from one manufacturer or shipper, although various qualities of that class should be included upon one report, and where the number of unit items are to be carried forward to another sheet, the continuation sheet should be used and the items should not be written on the back of the card.

Care should be taken to distinguish between manufacturers and shippers, as this information is very important to the C. V. R. Bureau for filing purposes. Care should also be taken to distinguish between the shipper and merely the forwarding agent, and it is not necessary to report the names of forwarding agents.

Whenever an appraisement is made in conformity with a price list furnished by the C. V. R. Bureau, a statement should be made on the card that the appraisement is made in accordance with such price list, giving the date of the price list.

Appraising officers should not delay appraisement awaiting information from the C. V. R. Bureau, but should make their returns promptly. If the report of the C. V. R. Bureau indicates a higher value a prompt report should be made to the collector in order that he may order a reappraisement.

The C. V. R. Bureau is now furnishing all ports a card index of weekly decisions. It is recommended that the synoposis of the decisions as appearing upon these cards be carefully checked with the decisions, and whenever any errors are noted the appraiser at New York should be communicated with in order that the C. V. R. Bureau may send out the following week a corrected card.

Respectfully, ANDREW J. PETERS,
(89160.) *Assistant Secretary.*

APPRAISER OF MERCHANDISE, *New York.*

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(T. D. 36685—G. A. 7959.)

*Repair and equipment of a vessel.*

Certain items incident to the laying up of a vessel for the winter in a foreign port were assessed for duty by the collector under section 3114, Revised Statutes, at 50 per cent. The protestants claim that the items "general outfitting," "fitting out engine," "scrubbing," and "laying up" are not equipment or expense of repairs. *Held*, that from the testimony in this case the items "general outfitting" and "fitting out engine" are properly assessed by the collector; that from the said testimony and the rule of construction laid down by this board in Jules Matagrin's case, G. A. 7015 (T. D. 30571), adopted by the Court of Customs Appeals in Wright & Graham Co. *et al.* *v.* United States (6 Ct. Cust. Appls., 528; T. D. 36147), the items "scrubbing" and "laying up" are not covered by section 3114, and free of duty.

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United States General Appraisers, New York, September 18, 1916.

**In the matter of protest 796598 of Thousand Islands Steamboat Co. against the assessment of duty by the collector of customs at the port of Ogdensburg.**

[Modified.]

*Harry B. Mills* for the importers.

*Bert Hanson*, Assistant Attorney General (*Samuel Isenschmid*, special attorney), for the United States.

Before Board 3 (WAITE and HAY, General Appraisers).

HAY, *General Appraiser:* The steamer *St. Lawrence* is a vessel plying between Alexandria Bay and Clayton, on the St. Lawrence River. Because of harbor facilities the steamer laid up for the winter at Kingston, Ontario. While there certain moneys were expended upon it which, it is claimed by the collector, constituted equipment and expense of repairs, and duty was assessed at 50 per cent under section 3114 of the Revised Statutes. Section 3114 reads as follows:

SEC. 3114. The equipments, or any part thereof, including boats, purchased for or the expenses of repairs made in a foreign country upon a vessel enrolled and licensed under the laws of the United States to engage in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States, or a vessel intended to be employed in such trade, shall, on the first arrival of such vessel in any port of the United States, be liable to entry and the payment of an ad valorem duty of fifty per centum on the cost thereof in such foreign country; and if the owner or master of such vessel shall wilfully and knowingly neglect or fail to report, make entry, and pay duties as herein required, such vessel, with her tackle, apparel, and furniture, shall be seized and forfeited.

Against the collector's action in this respect a protest was filed claiming that the following items should not have been assessed with duty: General outfitting, $136.36; fitting out engine, $185.84; scrubbing, $115.97; laying up, $44.46.

In W. G. Sickel's case, G. A. 7639 (T. D. 34925), we said:

Upon the question as to what is meant by legitimate equipment of a vessel, both the decided cases and the lexicographic authorities are singularly silent. The question seems never to have been definitely adjudicated. The testimony in this case of witnesses of broad experience and wide knowledge in the equipment and management of ships is to the effect that such articles as are necessarily used upon a ship and do not form a part of the sea stores of the vessel and are not necessary for its propulsion or navigation are known as ship's equipment. This conclusion would seem to be in line with such reference as may be found to the general subject in the various decided cases, although, as heretofore stated, we are unable to find any case directly in point.

The statute provides for duty upon all expense of repairs made in a foreign country. Under the testimony we are convinced that the item of "fitting out engine" comes clearly within that description. From all the testimony before us the item of "general outfitting"

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comes partly within the meaning of "equipment" as used in this section and partly within "expense of repairs." As to both of these items, therefore, the protest is overruled.

The item of "laying up" apparently from the testimony does not come under "equipment" or "expense of repairs." It is merely the expense of putting the boat away in winter quarters. As to the item of "scrubbing" the testimony leaves us a little in doubt. It shows that the scrubbing was done before the vessel was painted; and while not necessary in order that the vessel might be painted, a better job of painting could doubtless be done after the vessel was scrubbed. The testimony also shows that they frequently scrub vessels when they are not to be painted. Being in doubt as to whether that item is covered by section 3114, Revised Statutes, we think the rule as stated by us in Jules Matagrin's case, G. A. 7015 (T. D. 30571), and adopted by the Court of Customs Appeals in Wright & Graham Co. *et al.* *v.* United States (6 Ct. Cust. Appls., 528; T. D. 36147), should be applied. The protest is therefore sustained as to the items of "laying up" and "scrubbing." The collector will reliquidate the entry accordingly.

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## (T. D. 36686—G. A. 7960.)

### *Merchandise imported through the mails.*

1. The Board of United States General Appraisers has jurisdiction to hear and determine a protest filed by the importer of merchandise through the mails.—United States *v.* General Electric Company (4 Ct. Cust. Appls., 287; T. D. 33494).

2. The informal papers prepared by the representative of the Government preliminary to the collection of the duties on the merchandise in conformity with Treasury Department regulations constitute an entry and the assessment and liquidation of the duties on the merchandise against which protest will lie under paragraph N of the tariff act of 1913.

3. Moneys received for duties by the representative of the collector or the postmaster on delivery of merchandise so imported through the mails is in actual payment of duties ascertained, as indicated by the receipt given to the importer or addressee of the package, and not as a deposit to secure the payment of duties to be subsequently ascertained.

PROTEST FILED PRIOR TO LIQUIDATION ILLEGAL.

SULLIVAN, *General Appraiser*, dissenting, holds: When merchandise is imported through the mails, the estimated duties paid, and protest filed, the entry being liquidated subsequent to the filing of protest, such protest is unavailing, being filed prior to liquidation.

The fact that the protest was filed after payment but before ascertainment and liquidation of duties does not give the protestant the right to invoke the jurisdiction of the Board of General Appraisers as to the merits of the controversy.

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United States General Appraisers, New York, September 20, 1916.

**In the matter of protest 791245–56808 of Mandel Bros. against the assessment of duty by the collector of customs at the port of Chicago.**

[Reversed.]

*G. W. R. Wallace* for the importers.

*Bert Hanson*, Assistant Attorney General (*Harry M. Farrell*, special attorney), for the United States.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers; Brown, G. A., concurring; Sullivan, G. A., dissenting).

McClelland, *General Appraiser:* Inasmuch as this protest is lodged against the payment of duty on merchandise imported through the mails and for which no such entry as is provided for in the customs administrative act of June 10, 1890, and the acts amendatory thereof was made, if the issue raised thereby was not *res judicata*, I should be inclined to hold that the board was without jurisdiction to determine it, and that therefore the protest ought to be dismissed.

It is my view that persons or firms who elect to import merchandise through the mails and fail to make regular entry therefor as provided in the customs administrative act, *supra*, can not avail themselves of the provisions of that act to protest against the duty collected on merchandise so imported and not formally entered by them for appraisement and classification. Whatever entry was made in this case was made either by the representative of the collector of customs or the postmaster and not by the addressees of the package containing the merchandise. The duties, as indicated by Exhibit 1, were *paid* by the addressees and formally receipted for on delivery to them by the postmaster. The amount levied was not *deposited* by the addressees as security against duties finally to be ascertained, but in actual payment thereof. For the postmaster or collector to have so received the duties would have been a clear violation of the instructions printed upon the back of the so-called entry. (See articles 235, 236, 237, and 238 of the Treasury regulations of 1915.) The mere fact that this paper called an entry bears the stamp "Liquidated March 19, 1915," can not serve to make it an entry of the merchandise within the meaning of the statute, but even if it were assumed for argument's sake that it is such an entry and that the stamp "Liquidated March 19, 1915," notwithstanding that there is no change in the figures placed on the paper at the time of the payment of the duties, and no evidence of any computation having been made by a liquidator, the impracticability of such a procedure in so far as it may affect the rights of the addressees of a package is illustrated by the facts set forth in G. A. 7680 (T. D. 35123) in my dissenting opinion. The package containing the merchandise which was the subject of protest in that case arrived at the New York post office on or about September 1, 1911. The collector's representative made entry thereof and

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appraised the merchandise. It was then forwarded to the postmaster at Portsmouth, Ohio, with instructions to collect the duty, deliver the package, and forward the money collected to the collector of customs at the port of New York. If the paper made by the collector's representative in that case—the so-called postal entry upon which the contents of the package were described and the appraised values thereof stated—was in fact an entry of the merchandise, and the money collected by the postmaster was only received by him as a deposit to secure the payment of the duties, the amount whereof was later to be determined upon liquidation, the ineffectiveness of the statutory provisions for relief, in so far as they affected the addressee, is at once apparent by reference to that part of paragraph 641 of the Treasury regulations, which reads:

> The date of ascertainment and liquidation is the date of liquidation stamped upon the entry, and the posting of the same in a conspicuous place in the customhouse is held to be sufficient notice thereof to the importer.

This so-called entry returned by the postmaster at Portsmouth to the collector of customs at New York might be liquidated one month or six months after it was claimed to have been made, and yet, in order to preserve his rights, the addressee or payor of the duties at Portsmouth would either have to give personal attention to the posting of the liquidation bulletins at the customhouse in New York or employ some one to do so for him.

My attention is directed, however, to United States *v.* General Electric Co. and General Electric Co. *v.* United States (4 Ct. Cust. Appls., 287; T. D. 33494), wherein a similar issue was passed upon in which it was held that the right of protest against duties assessed upon merchandise imported through the mails from Great Britain under a parcel-post treaty, which, in so far as applicable to the case at bar, is in exactly the same language as the postal treaty with Italy, the country from which the merchandise involved in this protest was imported existed. In that case, writing for the court, Judge Montgomery said:

> The convention with Great Britain provides in article 7 (33 Stat. L., pt. 2, 2302) that the merchandise imported under its provisions shall be subject to all customs duties or customs regulations enforced in this country, and shall be delivered to the addressee upon his payment of the duties properly chargeable thereon. The question is presented, therefore, whether with this grant of a supposed privilege the purpose was to attach thereto the condition of a waiver of a substantial right of appeal, or whether, on the other hand, the Government intended to waive the necessity of a formal entry. We think the latter is the more reasonable construction of these regulations. The rights of the Government are fully protected by the provision that a formal entry may be required whenever deemed necessary. On the other hand, the rights of the importer would not be fully protected if an erroneous classification should be given and no remedy afforded.

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This holding of the court is, of course, controlling upon this tribunal, and inasmuch as the right of protestants exists it must now be determined whether the protest was filed within the statutory time. As I have already clearly indicated, it is my view that the duties were ascertained and paid when the merchandise was delivered to protestants on March 1, 1915. In harmony with that view I must therefore hold that the protest was lodged in time.

The merchandise involved being medals designed to be used as articles of devotion, it would seem to fall within the ruling of the court in United States *v.* American Bead Co. (7 Ct. Cust. Appls., —; T. D. 36456), and it follows that the protest should be sustained.

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CONCURRING OPINION.

BROWN, *General Appraiser:* I concur in the conclusion reached by Judge McClelland in this case for the following reasons:

It seems clear that the right to bring suit before this board for the refund of duties by protesting the action of the collector (par. N, sec. 3, act of 1913) covers all classes of importations, necessarily including those in parcel-post packages. For simplicity in collecting duties on parcel-post packages the department's regulations provide that the importer shall be summoned to the post office and presented with a paper, in form a liquidation, which is also entitled "Entry of merchandise imported through the mails." This he is asked to sign at the time he pays his duties, and he receives a receipt therefor headed "Receipt to importer for duty paid on merchandise imported through the mails."

In my opinion the passage of these papers constitutes a simultaneous liquidation and entry and dispenses with more formal proceedings on both sides, amounting to a waiver of a more formal entry on the part of the importer and a waiver of a more formal liquidation by the Government. Consequently, as these papers, which were dated March 1, 1915, passed between the importers and the Government on March 6, 1915, the protest, dated March 17, 1915, was clearly in time.

The language of Mr. Justice Holmes, in speaking for the Supreme Court in United States *v.* Emery *et al.* (237 U. S., 28), where jurisdiction of the District Court, sitting as a court of claims under the Tucker Act, was sought to be ousted upon a bare technicality, is worth noting, particularly as our jurisdiction is, in effect, that of a court of claims as far as customs classification is concerned. Moreover, our jurisdiction over the refunding of customs duties and taxes claimed to have been illegally exacted upon the importation of merchandise is exclusive. Schoenfeld *v.* Hendricks (152 U. S., 691), De Lima *v.* Bidwell (182 U. S., 179). This board is the only court of

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claims empowered to grant relief in such cases. In the Emery case, *supra*, Mr. Justice Holmes said (p. 32):

> The argument that there is a distinction between claims "arising under" (Judicial Code, sec. 24, First) and those "founded upon" (*id.*, sec. 24, Twentieth), a law of the United States, rests on the inadmissible premise that the great act of justice embodied in the jurisdiction of the Court of Claims is to be construed strictly and read with an adverse eye.

The same presumptions and intendments in favor of jurisdiction affecting refunds for erroneous classification of merchandise would necessarily attach to the jurisdiction of the Board of General Appraisers.

It would be unwarranted as matter of law for us to decline jurisdiction here over parcel-post packages generally, or over this particular importation, because of alleged informality in the entry and liquidation made in this form followed by timely protest, particularly as both the Government officials and the importers, in adopting this form of liquidation and entry, acted in obedience to a departmental regulation passed for convenience of administration to facilitate the use of the parcel-post system in the importation of merchandise.

It would be indeed an unwarranted legal conclusion to hold that the importer lost his rights because he had made an entry and accepted liquidation in this form and then protested, without making another entry and awaiting a second unnecessary liquidation thereon.

This is undoubtedly what Judge Montgomery was referring to when, in discussing the legality of a protest made on a parcel-post entry under the British treaty (United States *v.* General Electric Co., 4 Ct. Cust. Appls., 287; T. D. 33494), he held that a reasonable construction must be given to these regulations, adding that—

> The rights of the importer would not be fully protected if an erroneous classification should be given and no remedy afforded.

The decision in this case of General Electric Co., in my opinion, conclusively determines the question of jurisdiction and the legality and timeliness of the protest in the case at bar.

I further concur in the conclusion on the merits that judgment should be given for the importers and the protest sustained.

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DISSENTING OPINION.

SULLIVAN, *General Appraiser:* I wish to dissent from the action of my associates in sustaining this protest, for the following reasons:

The merchandise under consideration was imported by mail. It consists of metal medals used as articles of devotion, assessed with duty at 60 per cent ad valorem as metal articles designed to be

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worn or carried about the person, valued at more than 20 cents per dozen pieces, under paragraph 356 of the tariff act of 1913, and claimed in the protest dutiable at 20 per cent ad valorem as manufactures of metal under paragraph 167 of the same act.

At the opening of the trial the Assistant Attorney General moved that the protest be dismissed on the ground that it was filed two days before the liquidation of the entry. The motion was taken under advisement. This requires us to first examine the facts to determine whether or not it is valid.

It appears from the record the merchandise was entered at Chicago, March 1, 1915. On March 6, 1915, the importers paid to the collector, as shown by Exhibit 1, the sum of $15.77 as estimated duties on the merchandise. It further appears that the entry was liquidated on March 19, 1915, the amount found due being the exact amount paid by the importers. On March 17, 1915, the protest was filed, two days prior to the liquidation of the entry.

The question arises, Under this state of facts has the board jurisdiction to try this cause on its merits?

The statute with reference to the ascertainment and liquidation of duties is as follows:

> N. That the decision of the collector as to the rate and amount of duties chargeable upon imported merchandise, or upon merchandise upon which duty shall have been assessed, including all dutiable costs and charges, and as to all fees and exactions of whatever character (except duties on tonnage), shall be final and conclusive against all persons interested therein, unless the owner, importer, consignee, or agent of such merchandise, or the person paying such fees, charges, and exactions other than duties, shall, within thirty days after but not before such ascertainment and liquidation of duties, * * * if dissatisfied with such decision imposing a higher rate of duty, or a greater charge, fee, or exaction than he shall claim to be legally payable, file a protest or protests in writing with the collector * * *.

This statute is clear as to the time within which a protest may be filed. It can not be filed prior to the ascertainment *and liquidation* of duties, and must be filed within thirty days after, *but not before*, such liquidation.

A similar statute has been before the board and the courts under the act of 1909.

*In re* protest 723883 of Mrs. J. B. Dimmicks, G. A. 7593 (T. D. 34696), the board had before it the following facts: On September 18, 1913, Mrs. Dimmicks entered the port of Buffalo as a resident of the United States returning from abroad. She was required by the collector of that port to pay duties on certain articles coming within the $100 exemption of paragraph 709 of the tariff act of 1909. She made a baggage declaration, and a deposit was required, as is usual in such cases. The entry was thereafter liquidated on October 9, 1913, and duty assessed upon the merchandise. On Oc-

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tober 3, 1913, Mrs. Dimmicks filed a protest, claiming the exemption. The cause came on to be heard at New York on May 25, 1914, when the Assistant Attorney General moved that the case be dismissed for want of jurisdiction.

Subsection 14 of section 28 of the tariff act of 1909, under which that protest was filed, was very similar to paragraph N of section 3 of the present act, except as to the time within which a protest may be filed.

In that case the board cited the American Express Co.'s case, G. A. 6552 (T. D. 27962), which was affirmed by the United States Circuit Court for the Southern District of New York in United States *v.* American Express Co. (154 Fed., 996; T. D. 28285), and quoted therefrom as follows:

> As pointed out, section 14, in our judgment, provides two distinct and separate acts of the collector against which protests may be filed—first, his decision as to the rate and amount of duties upon imported merchandise, and, second, his decision upon fees and exactions. We think this is made perfectly clear by the fact that the limitation of time wherein protests may be filed is separately stated. A protest against the decision of the collector as to the rate and amount of duty must, under the section, be filed within 10 days after, but not before, the ascertainment and liquidation of duties. A protest against fees and exactions must be filed within 10 days after the payment of such fees, charges, and exactions.

The board dismissed the case for want of jurisdiction, holding that the protest could not legally be filed before the ascertainment and liquidation of duties.

That authority is directly in point. Ascertainment and liquidation of duties does not mean payment. It means the doing of everything required of the collector to ascertain the exact amount due. When that is done the duties are ascertained and liquidated, and the time within which to file protest begins to run.

The same rule was enunciated by the board in Kay, Graham Co.'s case, protest 608473, G. A. 7680 (T. D. 35123). In that case the protest was not filed in time, and it was held by the board that the time within which a protest may be filed begins to run from the date of ascertainment and liquidation of duties, and not the date of payment of such duties. That was a parcel-post importation. See also *In re* protests 408257, etc., of General Electric Co., G. A. 7402 (T. D. 32957).

In the case at bar, the liquidation having taken place on March 19, 1915, the protest should have been filed within 30 days thereafter. The fact that it was filed after payment and before ascertainment and liquidation does not give to the protestants the right to invoke the jurisdiction of the board.

My associates rely on the case of United States *v.* General Electric Co. (4 Ct. Cust. Appls., 287; T. D. 33494) as sustaining the prot-

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estants. In my judgment this case is wholly inapplicable and as remote from the question at bar as the poles. The General Electric case had reference entirely to entry under parcel post, and whether or not it had been waived. In the case at bar protest was made before liquidation was had on the entry. In the General Electric case the court held that entry might be waived. In the case at bar entry was made and so considered by both parties. In that case the court said:

> Our conclusion is that the purpose and intent of these regulations were to waive the formal entry except when required, and that no legal right which the importer had of appeal to the classification board was withdrawn by such waiver.

We have not such condition in the case at bar. Waiver is not pleaded and not contended for. Evidence was not offered as to the treaty between Great Britain and the United States, and can not be considered unless this board is to take judicial notice of the existence of a treaty. Regulations can not waive the statute. The Secretary of the Treasury is powerless to add a condition to a postal entry that the statute does not permit. The statute requires an entry, and entry was had. It may have been very informal, but it was had. That entry was liquidated; the protest was filed two days prior to the liquidation; and how the action of a court of claims, construing a statute with reference to a claim against the Government growing out of an act of Congress as to the filing of claim, can be applicable to a statute specifically declaring what shall and shall not be done, is beyond my comprehension. I may be old-fashioned, but I still wish to retain a faint relationship between the paper filed and the claim made, as there should be between the protest and the proof offered. Either the statute saying that the filing of the protest prior to liquidation shall be of no avail is void, or it has force. I am willing to concede it has force, and until that statute is declared inoperative, I shall hold that the filing of a protest prior to liquidation is of no validity whatever.

The protest should be dismissed.

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(T. D. 36687—G. A. 7961.)

*Cotton quilts—Bedspreads.*

1. QUILTS.

Jacquard-figured cotton quilts are more specifically provided for as "quilts * * * of cotton" under paragraph 264, tariff act of 1913, than as "Jacquard-figured manufactures of cotton" under paragraph 258.—Abstract 36788 (T. D. 34871) followed.

2. BEDSPREADS.

Cotton bedspreads made of a single thickness of cotton cloth, hemmed at either end, and having a white groundwork with a design printed thereon, of

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a size and character suitable for covering a bed, are not "quilts" within ordinary understanding, and are dutiable as "articles made from cotton cloth" under paragraph 266, act of 1913.

United States General Appraisers, New York, September 20, 1916.

In the matter of protest 784807 of McGibbon & Co. against the assessment of duty by the collector of customs at the port of New York.

[Modified.]

*Brooks & Brooks* (*Ernest F. A. Place* of counsel) for the importers.

*Bert Hanson*, Assistant Attorney General (*Martin T. Baldwin*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

COOPER, *General Appraiser:* This protest is against the collector's classification of certain cotton quilts. It is claimed that the articles are dutiable at 25 per cent ad valorem under paragraphs 263 and 264, act of 1913. Paragraph 263 relates to cotton table damask and the importers evidently rely upon the claim under paragraph 264, which is as follows:

264. Towels, bath mats, quilts, blankets, polishing cloths, mop cloths, wash rags or cloths, sheets, pillowcases, and batting, any of the foregoing made of cotton, or of which cotton is the component material of chief value, not embroidered nor in part of lace and not otherwise provided for, 25 per centum ad valorem.

It appears from the invoices that the merchandise invoiced as "cotton quilts" was classified as "Jacquard figured manufactures of cotton" at 30 per cent ad valorem under paragraph 258, and that the merchandise described on the invoice covered by entry 260834 as "bedspreads" was classified as manufactures of cotton at 30 per cent ad valorem under paragraph 266.

The appraiser's report or answer to the protest, which was admitted in evidence, shows that the merchandise classified as "Jacquard-figured manufactures of cotton" is of the same character as that passed upon by the board in the case of Sherman & Sons (Abstract 36788; T. D. 34871), wherein we held that cotton quilts were more specifically provided for under paragraph 264 than under paragraph 258. Following said decision we hold that the quilts covered by entries 273930 and 282195 are dutiable at 25 per cent ad valorem under paragraph 264. As to said merchandise, therefore, the protest is sustained.

The question yet to be decided is whether or not the articles invoiced as "bedspreads" are cotton quilts. The sample of said merchandise which is in evidence consists of a single thickness of cotton cloth, hemmed at either end, and having a white groundwork with a design printed thereon of a size and character suitable for covering a bed, and the testimony shows that it was designed for a top cover-

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ing or coverlet of a bed. The term "quilt" is defined in the dictionaries as follows:

New Standard Dictionary:

1. A bed cover or coverlet made by stitching together two layers of cloth or patchwork with some soft and warm substance (as wool or cotton) between them. 2. Any bed cover, especially if thick and warm. 3. A quilted skirt or other quilted article. 4. A mattress.

Century Dictionary:

1. An article of bed furniture used like a mattress and consisting of some soft material placed between two pieces of fabric which were stitched together. 2. A cover or coverlet made by stitching together two thicknesses of a fabric with some soft substance beween them; any thick or warm coverlet; as a patchwork quilt.

Webster's Dictionary:

1. Originally, a kind of mattress formerly used for sleeping on; now, a bed coverlet made of two thicknesses of material with a filling or interlining of wool, cotton, down, etc., stitched through in patterns, or tufted; also, any warm outer bed covering; as: *a*. A pad formerly worn under or in place of armor. *b*. An article of quilted stuff, as a petticoat. *c*. A pad smeared or stuffed with medicinal substance and applied to some part of the body.

In ordinary speech and understanding, the first impression brought to the mind by the word "quilt" is a thick bed covering made of two or more materials stitched together with cotton batting or other filling between them. According to the dictionary definitions, however, the term appears to be now used in a broader sense and includes any heavy bed covering used for warmth. The articles in question do not respond to either definition. They consist of but a single thickness of cloth, and they are neither heavy nor warm. We can not believe that every covering used on a bed is a quilt, for surely a fancy lace bed covering or a cotton or linen sheet would not be so considered. In warm weather a sheet is often used as the outer and only covering on the bed at night, but it is not by that use converted into a quilt.

We hold that the sample before us, which represents the merchandise covered by entry 260834, is not a quilt, and the protest with respect to said merchandise is overruled.

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(T. D. 36688—G. A. 7962.)

*Reappraisment of merchandise subject to specific duty.*

1. Merchandise should be appraised at its market value, irrespective of whether it bears a specific or an ad valorem rate of duty.

2. It devolves upon appraising officers to ascertain the value of imported merchandise, and by paragraph K they are required to appraise all imported merchandise at its market value. It is the duty of the general appraiser, whether merchandise is dutiable at an ad valorem or a specific rate, to appraise all the merchandise and not a part thereof.



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3. Where merchandise was purchased as an entirety, entered as such, and the entered value of the entirety is not disturbed, there is no warrant in law that will permit advancing a part of this entirety without advancing the entered value of the whole.

4. Where olive oil is imported in bottles, and the value of the oil is per case, bottles included, the mere advancement of the bottles, which pay an ad valorem rate of duty, without disturbing the entered value of the olive oil, which pays a specific rate of duty, is contrary to law. Either the entered value of such merchandise must be increased to correspond with the value found on each item or the invoice value must be affirmed as a whole.

United States General Appraisers, New York, September 19, 1916.

In the matter of reappraisement 86783 of George Borgfeldt & Co.

[Reversed.]

*John E. Dowsing* for the importers.

*Bert Hanson*, Assistant Attorney General (*Leland N. Wood*, special attorney), for the United States.

SULLIVAN, *General Appraiser:* The merchandise in question consists of olive oil in bottles, imported from Paris April 29, 1916, by George Borgfeldt & Co., New York.

The first description on the invoice refers to 48 bottles of olive oil in a case, the olive oil being contained in 4-ounce bottles, and the value of the bottles and oil being 21.55 francs per case. The remaining items are of the same character, except as to the number of bottles and the size, which runs as high as 32-ounce bottles. On the invoice is noted the following values of the bottles included in the cost price of the merchandise:

| | Francs. |
|---|---|
| 4-ounce, per hundred | 8.35 |
| 8-ounce, per hundred | 10.65 |
| 16-ounce, per hundred | 13.20 |
| 32-ounce, per hundred | 18.70 |

No reference is made to the value of the oil, except as it is included in the unit value of the bottles and oil per case.

In the appraisement of the merchandise the bottles were valued as follows:

| | Francs. |
|---|---|
| 4-ounce, per hundred | 12.00 |
| 8-ounce, per hundred | 16.00 |
| 16-ounce, per hundred | 21.00 |
| 32-ounce, per hundred | 25.00 |

The invoice value of the merchandise as a unit apparently was not increased, and there was no appraisement of the oil.

On appeal being taken to a single general appraiser the question presents itself, Did the increased appraisement of the bottles affect the entered or unit value of the merchandise? If such entered or unit value was not increased, does the fact that the value of the bottles was increased justify an affirmance of the action of the appraiser?

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I have not previously had this question presented in the present form. It has been my holding as a single general appraiser that, where the entered or unit value was not advanced, the mere advancement of one of the items constituting part of the unit did not justify an increase in the total value, and the entered value was sustained. In the present case the bottles are dutiable at an ad valorem rate. The olive oil is dutiable at a specific rate. The appraiser did not appraise the olive oil, and, as shown by the record, he did not accept—except inferentially at least—the value placed thereon by the importers.

At the hearing the examiner testified as follows:

Q. Mr. Slavin, state whether or not the *per se* value there is correct.—A. I don't know the value of the oil; I paid no attention to the value of the oil, but I do know that the bottles as returned by me there are of the value at which I was getting similar bottles right along.

Q. Why don't you appraise the oil? Why isn't that appraised?—A. The oil paying a specific rate of duty, the value of it doesn't really enter into the duties of the examiner; that is why I didn't appraise the value of the oil.

It is insisted by the importers that the goods were sold at a unit price, and that the appraiser could not separate the value by increasing that of the bottles and leaving that of the oil alone, unless the entered value was increased as to the entire item.

All importations of merchandise under the act of 1913 must state from whom purchased, the price paid, and the total value. This is a statutory requirement. It is immaterial whether the merchandise bears an ad valorem or specific rate of duty. Paragraph K of section 3 provides:

K. That it shall be the duty of the appraisers of the United States, and every of them, and every person who shall act as such appraiser, or of the collector, as the case may be, by all reasonable ways and means in his or their power, to ascertain, estimate, and appraise (any invoice or affidavit thereto or statement of cost, or of cost of production to the contrary notwithstanding) the actual market value and wholesale price of the merchandise at the time of exportation to the United States, in the principal markets of the country whence the same has been imported, and the number of yards, parcels, or quantities, and actual market value or wholesale price of every of them, as the case may require.

This statute is imperative. It is immaterial whether the merchandise may ultimately bear a specific or ad valorem rate of duty; it devolves upon the appraising officer to ascertain the value. It is the duty of the general appraiser, whether the merchandise shall be dutiable at an ad valorem or a specific rate, to appraise the value of the merchandise—all of it, not a part.

It is insisted that as no penalty could arise even if an undervaluation was had, and, if the value is declared more by the Government than the entered value, the importer need not appeal, as that would be useless, and therefore an appraisement is wholly unnecessary.

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That argument can not be sustained. A question may arise in which the value of the merchandise may be extremely important, not alone for statistical purposes, but for the purpose of ascertaining whether or not the merchandise is being entered at its correct value. Be that as it may, the duty devolves upon the Government to appraise, and it can not disregard its obligation because the merchandise is dutiable at a specific rate. The merchandise was imported as a unit—one bottle of olive oil. The price was per case, but it might just as well have been per bottle. If the olive oil was invoiced at $1.50 per bottle, and the statement on the invoice that the bottle was valued at 50 cents included in the price, yet the Government advances the price of the bottle to $1.50, which equals the unit value of the merchandise—does not that fact increase the unit value of the article? If so, is it not a necessity that the value of the different items be ascertained, that a correct conclusion may be had? The statute directs that merchandise must be appraised, and reason, as well as the authorities, sustains that rule.

In Sheldon *v.* United States (6 Ct. Cust. Appls., 516; T. D. 36143), passing indirectly upon this question, wherein antimony, under the act of 1909, bearing a specific duty, and after the making of warehouse entry was appraised by the local appraiser at a higher value at the time it was withdrawn from warehouse, the question arose, Was it subject to the law of 1909 or the act of 1913? Under the act of 1913 the merchandise is dutiable at an ad valorem rate. In passing thereon as to the necessity of appraisement of merchandise bearing a specific rate of duty, the court said:

> In this case no fraud is averred or suggested, and, indeed, it would be difficult to conceive how an undervaluation upon entry of specific goods could under this act have worked a fraud. Assuming the act to have contemplated an appraisal of specific goods, which is not an unreasonable construction of the act, the question of the duty resting upon the importer with reference thereto becomes one of first importance. It is, of course, made his duty at the time of entry to state the value of the goods as he conceives it to be. This he did, and no fraud is suggested, as before stated. Thereupon an appraisement is had by the appraiser, and the value stated in the entry is advanced.

The entire act of 1913—in fact, all tariff acts—contemplate an appraisement of all imported merchandise. To hold otherwise would destroy the effect of a tariff act. If this was not true, and carried to its logical conclusion, merchandise bearing a specific duty need not be appraised at all—a result that would be revolutionary. It does not necessarily require that the merchandise be advanced, but it does require that it be appraised.

I am without the benefit of the value of the oil. It would not have been assessed under paragraph 45 of the act of 1913 if it was not of the character of the oils in that paragraph. It did pay a duty. It did enter into the value of the unit. Now, the unit value not being

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increased, it still remaining as declared on the invoice, how can I, as general appraiser, find a different value? I may find the value of the bottles to be as stated in the appraisement, viz, 12, 16, 21, and 25 francs per hundred, without ascertaining the value of the unit. Am I to presume that by reason of raising the value of the bottles the value of the oil is decreased? Isn't that a violent construction of the statute? If the general appraiser is to find the value of the merchandise it must be of the entire article, not a part. The value found by the appraiser is the entered value upon the entire unit. How can I increase the value of a moiety of the article without disturbing the entered value? If I had the value of the oil and the value of the bottle, I could then find the value of the unit. Not having such facts, I can not presume that the value is different from that as shown by the invoice, and I can not pick out any one single item in that unit article and advance it without disturbing the value on the remainder, and I am without evidence as to the remainder.

The merchandise was purchased as an entirety, entered as an entirety, and the entered value not disturbed. There is no warrant in law that will permit the advancing of a part of this entirety and yet affirm the entered value. I can not bring my judgment to the conclusion that such a ridiculous result was contemplated by the lawmakers, and it can not be found by a reading of the statute. If the appraising officer of the Government accepts the entered value as being correct, the presumption that he has done his duty necessarily follows and will be sustained.

I therefore will accept the value found by the appraiser, and that is that the unit or entered value is correct. I so find.

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(T. D. 36689—G. A. 7963.)

*Cotton bedspreads—Sheets.*

Bed coverings, composed of cotton ripple cloth, used to cover the blankets for the purpose of protecting them from dirt and not used next to the sleeper, are not "sheets * * * made of cotton" within the meaning of that term in paragraph 264, tariff act of 1913, but are dutiable as "articles made from cotton cloth" under paragraph 266.

United States General Appraisers, New York, September 22, 1916.

In the matter of protest 792461 of Knauth, Nachod & Kuhne against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

*Strauss & Hedges* (*Jacob L. Klingaman* of counsel) for the importers.

*Bert Hanson*, Assistant Attorney General (*Martin T. Baldwin*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

COOPER, *General Appraiser:* Merchandise described on the invoice as cotton quilts was classified by the collector as articles of cotton

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cloth and returned for duty at the rate of 30 per cent ad valorem under paragraph 266 of the act of 1913. It is claimed that said articles are dutiable at 25 per cent ad valorem under paragraph 264, or at the rate applicable according to the average number of the yarn which they contain under paragraphs 252 and 253. Protestants, in their brief, however, rely only upon the claim under paragraph 264, which reads as follows:

264. Towels, bath mats, quilts, blankets, polishing cloths, mop cloths, wash rags or cloths, sheets, pillowcases, and batting, any of the foregoing made of cotton, or of which cotton is the component material of chief value, not embroidered nor in part of lace and not otherwise provided for, 25 per centum ad valorem.

The record shows that the articles in question are pieces of cotton ripple cloth, or cloth having narrow ripple stripes, 72 by 99 to 88 by 99 inches in dimension, having a hem at either end. They are used to cover the blankets on beds to protect them from dirt. They are put over the blankets and not under them; that is, they are not placed between the blankets and the mattress and are not used next to the body of the person sleeping in the bed. The paper in which the goods are wrapped, a sample of which has been forwarded by the appraiser and constitutes a part of the official sample in the case, is labeled "Zephyr spread."

The question arises as to whether or not these articles are "sheets * * * made of cotton" within the meaning of the paragraph quoted. The word "sheets" is described in the dictionaries as follows:

Webster's New International Dictionary:

In general, a large, broad piece of anything comparatively thin, as paper, cloth, etc.; a broad, thin portion of any substance. Specif. *a.* A broad piece of cloth, usually linen or cotton, used for wrapping the body or for a covering; esp., one used as an article of bedding next to the body. *b.* A broad piece of paper, whether folded or unfolded, blank or written or printed on; esp., a single one of the separate pieces of any of the sizes of paper prepared for writing on or printing on. *c.* A broad, thinly expanded portion of metal or other substance. *d.* A broad expanse or surface, as of water or flame. *e.* A sail.

Century Dictionary:

1. A large square or rectangular piece of linen or cotton spread over a bed, under the covers, next to the sleeper. 2. In general, a broad, usually flat, and relatively thin piece of anything, either very flexible, as linen, paper, etc., or less flexible, or rigid, as lead, tin, iron, glass, etc. 3. A broad expanse or surface; as a sheet of water, of ice, or of flame. 4. A sail.

Standard Dictionary:

1. A very thin and broad piece of any substance; that which is or can be spread as upon a surface, or can be laid in broad folds; anything having considerable expanse with very little thickness. Specifically: (1) A large square or rectangular piece of linen or cotton cloth, commonly used in making up a

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bed to separate a sleeper's body from the other bedclothes above and beneath. (2) A piece of paper, especially one of a regular size, considered as the 24th part of a quire. (3) A piece of metal or other substance hammered, rolled, fused, or cut very thin. (4) A sail.

It is apparent from the definitions quoted that the term "sheets" is used in two ways: First, as a descriptive term referring to a broad class of articles having the proper size, shape, and thickness; and, secondly, as a specific name given to a particular article in conversation and speech. The first class covers any article of broad expanse which is flat and thin, no matter what the material of which it is composed. The second class covers linen or cotton articles used as bedding to separate the sleeper's body from the other bedclothes. The same term is also used in referring to an article used to wrap the body in, and also to a sail for a boat.

Under the general definition of the word, the articles in question might be termed cotton in sheets, or cotton cloth in sheets. But is the provision for sheets in paragraph 264 a general provision intended to cover all sheets composed of cotton? We think it is not. We are of opinion that it is used as a denominative and not a descriptive term. The very language employed—"sheets * * * made of cotton"—signifies that it was the intention of Congress to provide for a specific article; that is, an article known as sheets, and not to provide for a broad class of articles coming within the general description of sheets by their size, shape, and thickness, although known by other names, and signifying a broad piece of anything comparatively thin. Therefore, although the articles in question are, broadly speaking, cotton cloth in sheets, they are not "sheets made of cotton" within the meaning of the law.

Furthermore, all the articles provided for in paragraph 264 are in daily household use, and we believe that the term "sheets" in that paragraph is restricted by its association with towels, bath mats, quilts, blankets, pillowcases, etc., to the sheets that are usually and commonly designated as such in household use. Bed sheets respond to all such requirements. Such sheets are used on beds under the blankets and next to the body of the sleeper. The articles in question, although used on beds, are not bed sheets because they are not used next to the body. Nor are they quilts or blankets, because they are neither heavy nor warm. See McGibbon's case, protest 784307, G. A. 7961 (T. D. 36687). They would be more properly designated as bedspreads or covers, which are not provided for by name in paragraph 264 and fall for duty under the general provisions for "articles made from cotton cloth, whether finished or unfinished, and all manufactures of cotton" in paragraph 266, under which they were classified.

The protest is accordingly overruled.

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*Abstracts of decisions of the Board of General Appraisers.*

*Board 1*—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

BEFORE BOARD 1, SEPTEMBER 18, 1916.

**No. 40140.**—Protest 793903 of Stone & Downer Co. (Boston).

OIL FOR STUFFING LEATHER.—Merchandise invoiced as recovered oil and classified as distilled oil at 20 per cent ad valorem under paragraph 46, tariff act of 1913, is claimed entitled to free entry as oil for stuffing or dressing leather under paragraph 498, or dutiable as oil, rendered, at 15 per cent under paragraph 44.

Opinion by MCCLELLAND, G. A. The merchandise being identical with that covered by G. A. 7870 (T. D. 36218) it was held free of duty under paragraph 498.

**No. 40141.**—Protests 791732, etc., of Lamont, Corliss & Co. (New York).

"VINOLIA CREAM"—"R. V. CREAM"—MEDICINAL PREPARATIONS.—"Vinolia Cream" and "R. V. Cream" classified as toilet preparations at 60 per cent ad valorem under paragraph 48, tariff act of 1913, are claimed dutiable as medicinal preparations at 15 per cent under paragraph 5, or at 20 per cent under paragraph 17.

Opinion by MCCLELLAND, G. A. Upon stipulation of counsel the articles in question were held dutiable at 20 per cent under paragraph 17. G. A. 7912 (T. D. 36440) followed.

**No. 40142.**—Protest 801679 of J. A. Jacques (Boston).

ROSARIES.—Rosaries classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of metal under paragraph 167.

Opinion by SULLIVAN, G. A. No proof having been offered as to the component material of chief value in the rosaries the protest was overruled.

**No. 40143.**—Protest 801020-59100 of Sears, Roebuck & Co. (Chicago).

JEW'S-HARPS—TOYS.—Jew's-harps classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. Protest overruled, it not being shown that the jew's-harps in question do not come within the definition of toys laid down in Illfelder *v.* United States (1 Ct. Cust. Appls., 109; T. D. 31115).

**No. 40144.**—Protest 800707-52608 of Sears, Roebuck & Co. (Chicago).

PROTEST FEE.—The collector reports that the protest fee of $1 provided for in paragraph N of section 3, tariff act of 1913, has not been paid.

Opinion by SULLIVAN, G. A. Protest dismissed.

**No. 40145.**—Protests 784994, etc., of A. L. Tuska, Son & Co. et al. (New York).

EASTER BASKETS—TOYS.—So-called Easter baskets classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as baskets at 25 per cent under paragraph 175.

Opinion by SULLIVAN, G. A. On the authority of G. A. 7790 (T. D. 35796) the articles in question were held dutiable as baskets under paragraph 175.

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**No. 40146.**—Protests 782756, etc., of Oelschlaeger Bros. (New York).

OPTICAL INSTRUMENTS—MICROSCOPES.—Linen testers, fluoroscopes, tripod microscopes or magnifiers, reading glasses, and Coddington loupes, classified as optical instruments at 35 per cent ad valorem under paragraph 93, tariff act of 1913, are claimed dutiable as microscopes at 25 per cent under paragraph 94.

Opinion by SULLIVAN, G. A. The articles in question were all shown to be magnifiers identical with the merchandise heretofore held classifiable as microscopes rather than as optical instruments. On the authority of G. A. 7859 (T. D. 36174) and Abstracts 39827, 39580, 39581, 39249, and 38900, they were held dutiable under paragraph 94.

**No. 40147.**—Protests 781647, etc., H. Nordlinger's Sons (Providence).

BRASS SNAPS—PARTS OF JEWELRY.—Brass snaps classified as parts of jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable at 50 per cent under the same paragraph.

Opinion by SULLIVAN, G. A. On the authority of Mamluck *v.* United States (6 Ct. Cust. Appls., 556; T. D. 36198) the brass snaps in question were held dutiable at 50 per cent under paragraph 356.

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BEFORE BOARD 3, SEPTEMBER 18, 1916.

**No. 40148.**—Protest 801370, of Geo. Borgfeldt & Co. (New York).

AGATE COLLAR BUTTONS—ALABASTER GLOBES.—Agate collar buttons, classified at 40 per cent ad valorem under paragraph 339, tariff act of 1913, are claimed dutiable at 15 per cent under the same paragraph. Alabaster globes, classified at 45 per cent under paragraph 98, are claimed dutiable at 15 per cent under paragraph 376.

Opinion by HAY, G. A. The claim as to the alabaster globes having been abandoned was overruled. On the authority of G. A. 7753 (T. D. 35590) the agate collar buttons were held dutiable at 15 per cent under paragraph 339. Abstract 39992 cited.

**No. 40149.**—Protest 800087 of Pacific Trading Co. (San Francisco).

KASHITAN.—Merchandise reported by the appraiser to be Kashitan, classified as a nonenumerated manufactured article at 15 per cent under paragraph 385, tariff act of 1913, is claimed free of duty under paragraph 417.

Upon the admission on behalf of the Government that a mistake had been made in the classification of this merchandise it was held free of duty under paragraph 417.

**No. 40150.**—Protest 799713 of Swayne, Hoyt & Co. (San Francisco).

NISHIKI WARE—DECORATED CHINA.—Nishiki ware classified as decorated china under paragraph 80, tariff act of 1913, is claimed dutiable as decorated earthenware at 40 per cent ad valorem under paragraph 79.

Opinion by HAY, G. A. Upon the report of the appraiser that the merchandise in question was erroneously returned as decorated chinaware it was held dutiable as earthenware under paragraph 79. Protest sustained in part.

**No. 40151.**—Protests 797237, etc., of J. T. Steeb & Co. (Seattle).

TEA COVERINGS—ENTERED VALUE.—It is claimed here that the collector should not have included in the dutiable value of tea coverings the cost of packing the tea into the containers.

Opinion by HAY, G. A. It was found that the entry was liquidated upon the basis of the entered value. Protests overruled.

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**No. 40152.**—Protests 777095, etc., of J. S. Elliott et al. (Seattle, etc.).

TEA COVERINGS.—Certain containers of tea are claimed free of duty under paragraph 627.

Opinion by HAY, G. A. Wright *v.* United States (6 Ct. Cust. Appls., 528; T. D. 36147) followed as to tea coverings. Protests sustained in part.

**No. 40153.**—Protests 794691, etc., of Lombard & Co. (Boston).

GRINDSTONES.—Merchandise classified as earthy or mineral substances under paragraph 81, tariff act of 1913, is claimed dutiable as grindstones under paragraph 100.

Opinion by HAY, G. A. On the authority of Abstract 39860 the grindstones in question were held dutiable under paragraph 100, as claimed.

**No. 40154.**—Protest 793595 of Chas. H. Wyman & Co. (St. Louis).

CAPACITY OF BOTTLES.—The question here is the capacity of bottles in an importation of Gordon gin.

Opinion by HAY, G. A. It was found that the average capacity of the bottles in question is less than 23 ounces. The protest was sustained and the collector directed to reliquidate upon the basis of 23 ounces per bottle. G. A. 5214 (T. D. 24017) cited.

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BEFORE BOARD 1, SEPTEMBER 20, 1916.

**No. 40155.**—Protest 76127 of G. A. & E. Meyer (New York).

VARNISH—INK.

MCCLELLAND, *General Appraiser:* This protest is submitted for decision on the appraiser's report, which states—

The merchandise consists of varnishes and Indian ink put up in packages of less than 2½ pounds gross weight; * * * also so-called essence de petrole and siccatif de Harlem, put up in like manner.

Duty was assessed on all the merchandise at the rate of 20 per cent ad valorem, under paragraph 17 of the tariff act of 1913.

Protestants have submitted no evidence in support of any of the claims made, and we therefore affirm the action of the collector as being presumptively correct. Fougera *v.* United States (1 Ct. Cust. Appls., 146; T. D. 31208).

The protest is overruled.

DISSENTING OPINION.

BROWN, *General Appraiser:* I respectfully dissent from the decision of the board upon the varnish, because I think it sufficiently appears from the record that it is varnish, and therefore outside the purview of paragraph 17, and the protest properly claims it as varnish at the appropriate rate under paragraph 58. In all other respects and as to all other merchandise I concur in the decision of the board. The protest makes no claim under the ink paragraph.

**No. 40156.**—Protests 794286, etc., of M. Goldzier et al. (New York).

MILLINERY ARTICLES.—Merchandise reported by the appraiser to consist of ornamental feathers, artificial flowers, and feather boas, classified at 60 per cent ad valorem under paragraph 347, tariff act of 1913, is claimed dutiable at a lower rate under the same paragraph or under paragraph 385.

Opinion by MCCLELLAND, G. A. Protests unsupported; overruled.

**No. 40157.**—Protest 792547 of A. L. Tuska, Son & Co. (New York).

EASTER BASKETS.—So-called Easter baskets classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as baskets at 25 per cent under paragraph 175.

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Opinion by SULLIVAN, G. A. On the authority of G. A. 7790 (T. D. 35796) the articles in question were held dutiable as baskets under paragraph 175.

**No. 40158.**—Protests 761465, 763381, and 770439 of Britt, Loeffler & Weil (New York).

MALT PREPARATIONS.—Malt preparations put up in packages of less than 2½ pounds gross weight, classified as medicinal preparations at 20 per cent ad valorem under paragraph 17, tariff act of 1913, are claimed dutiable as non-enumerated manufactured articles at 15 per cent under paragraph 385.

Opinions by BROWN, G. A. On the authority of Britt *v.* United States (7 Ct. Cust. Appls., —; T. D. 36428) the protests were overruled.

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BEFORE BOARD 3, SEPTEMBER 20, 1916.

**No. 40159.**—Protest 793035 of Knauth, Nachod & Kuhne (New York).

POTATO STARCH.—Merchandise invoiced as potato flour, classified as starch made from potatoes at 1 cent per pound under paragraph 234, tariff act of 1913, is claimed free of duty under paragraph 581.

Opinion by WAITE, G. A. The Government chemist reporting that the merchandise is potato starch, it was held properly classified under paragraph 234.

**No. 40160.**—Protest 797924 of Stone & Downer Co. (Boston).

TULIP BULBS—MOTHER BULBS.—Tulip bulbs classified under the specific provision for tulips in paragraph 210, tariff act of 1913, at $1 per thousand, are claimed free of duty as mother flowering bulbs under the proviso to paragraph 210.

Opinion by WAITE, G. A. The bulbs being mature mother flowering bulbs imported exclusively for propagating purposes, they were held free of duty under paragraph 210, as claimed.

**No. 40161.**—Protest 797709 of Aug. Luchow (New York).

SHORTAGE OF BEER.—The invoices in this case call for 900 half barrels of beer, and it is claimed that there were only 850 half barrels and 50 quarter barrels, and that duty should have been assessed on this basis.

Opinion by WAITE, G. A. The Government gauger conceding the correctness of the importer's claim, the protest was sustained.

**No. 40162.**—Protest 796672 of T. D. Downing & Co. (New York).

WINE—PERCENTAGE OF ALCOHOL.—Still wine classified at 60 per cent ad valorem under paragraph 244, tariff act of 1913, as containing more than 14 per cent of alcohol, is claimed dutiable at only 45 cents per gallon as containing less than 14 per cent of alcohol.

Opinion by WAITE, G. A. Protest unsupported; overruled.

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BEFORE BOARD 1, SEPTEMBER 22, 1916.

**No. 40163.**—Protest 793413 of W. N. Proctor Co. (Boston).

MARBLE TILES, RUBBED.

MCCLELLAND, *General Appraiser:* The merchandise involved is described on the invoice as "marble tiles, finished." The return of the appraiser reads "marble tiles, rubbed, 8c. per sq. ft. p. 97." Duty was assessed at the rate of 6 cents per superficial foot, and in addition 2 cents per superficial foot as being "rubbed in whole or in part," under the provisions of paragraph 97 of the tariff act of 1913. Protestants claim that duty should have been assessed at only 6 cents per superficial foot, and that, as the tiles have not been rubbed,

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they are not subject to the additional duty of 2 cents per superficial foot. The question to be determined, therefore, is whether or not the tiles have been "rubbed in whole or in part."

The witness testifying on behalf of protestants states that he has visited Carrara, Italy, where such tiles are manufactured, and while there witnessed the processes to which they are subjected, and none of these processes consist of rubbing. He supports his claim by stating that after such tiles are laid they must of necessity be rubbed, and that such rubbing is done by an electrical machine, sand and water being used, not only to produce a smooth surface, but to bring out all the life of the marble.

The witness testifying for the Government is equally positive in his statement that the sample of the tiles in question submitted to him has been rubbed, and an examination of the sample tends to confirm his statement.

The theory of protestants that the tiles have not been rubbed is weakened by the admission of their witness that the process to which he submits such tiles after being laid is necessary whether the tiles are or are not rubbed before being laid. The law does not contemplate a polished or even a perfectly smooth surface as the result of being rubbed. Rubbing may be, and doubtless is, only one step beyond the sawing toward the finished state.

We find, as a fact, that the tiles are rubbed, and hold that duty was properly assessed.

No evidence having been offered in support of the issue involving the 5 per cent discount of duties under subsection 7 of paragraph J of section 4 of said act, the protest is overruled in all respects.

**No. 40164.**—Protests 783520, etc., of F. B. Vandegrift & Co. (Philadelphia).

OIL FOR LEATHER DRESSING.—Merchandise classified as a combination of distilled oils at 20 per cent ad valorem under paragraph 46, tariff act of 1913, is claimed entitled to free entry as oil for stuffing or dressing leather, under paragraph 498.

Opinion by MCCLELLAND, G. A. On the authority of Abstract 39576, covering similar merchandise, it was held free of duty under paragraph 498.

**No. 40165.**—Protest 797332 of A. Hamburger Sons' Co. (Los Angeles).

LEATHER GLOVES—LAMBSKINS—SCHMASCHEN.

MCCLELLAND, *General Appraiser:* The issue here is whether certain women's leather gloves, which were returned by the appraiser as being made from lambskins and assessed with duty accordingly, were in fact of lambskin or schmaschen. The only item numbers on the invoice involved are 309, 410, 421, and 430, although as the record shows, the appraiser at Los Angeles (the port of entry) originally returned two additional items as being of lambskin, and, later, upon the advice of an appraiser at another port, changed his return as to these two numbers from lamb to schmaschen.

The issue presented involves a much-mooted question. Experience has demonstrated that the most expert of glove handlers find extreme difficulty in determining the line of demarcation between schmaschen leather and lambskin leather. Especially is this the fact when, for example, it is a question whether a skin is high-grade schmaschen or low-grade lamb, and practically all so-called experts in the glove trade speak of high grades and low grades in discussing these two classes of skins.

Altogether 14 witnesses were called to testify in this case, each of whom justly takes credit for being more or less expert in his knowledge of the kinds and qualities of gloves generally dealt in in the glove trade, including the ability to distinguish between lamb gloves and schmaschen gloves. Among the seven witnesses called by protestants there is no difference of opinion.

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Each one in turn testified that all of the exhibits submitted to him, representing all of the items in issue, were schmaschen gloves. On the other hand, there were marked differences of opinion among the witnesses called by the Government. While each of them found some "lamb gloves" in the exhibits, they also found practically an equal number of "schmaschen gloves," and even as to those which were found to be of lambskin all were agreed that they were of a very low grade. It would seem to be solely a question of which side of the issue of fact is sustained by the weight of evidence, and we find by a clear preponderance in weight and value the contention of protestants that the gloves represented by each of the items enumerated above are schmaschen skin, and should have been classified by the collector accordingly.

No evidence having been offered to show whether the gloves were made with or without piqué seams, the collector's classification in respect thereof will stand. Neither was evidence offered in support of the issue involving the 5 per cent discount of duties under subsection 7 of paragraph J of section 4 of said tariff act, and the claim in respect thereof is overruled.

The collector's decision is modified accordingly.

**No. 40166.**—Protest 795047 of Arthur Litts (Los Angeles).

LEATHER GLOVES.—Women's leather gloves classified at $2 per dozen pairs under paragraph 363, tariff act of 1913, are claimed dutiable at $1 per dozen pairs under paragraph 362.

Opinion by MCCLELLAND, G. A. On the authority of Abstract 40165 the gloves in question were found to be made from schmaschen skin of sheep origin and held dutiable under paragraph 362.

**No. 40167.**—Protest 804175 of T. W. Thayer & Co. (Rochester).

BIRCH LUMBER.—Merchandise invoiced as birch lumber, sawed into strips 1¾ inches wide, planed on two sides, classified at 10 per cent ad valorem under paragraph 169, tariff act of 1913, is claimed free of duty under paragraph 647.

Opinion by MCCLELLAND, G. A. On the authority of Abstract 39795 the birch lumber in question was held entitled to free entry under paragraph 647.

**No. 40168.**—Protest 769337 of Adolph Strauss & Co. (New York).

MIRRORS.—Small round mirrors in cheap tin cases, and so-called triplicate mirrors, classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as mirrors at 30 per cent under paragraph 95.

Opinion by SULLIVAN, G. A. On the authority of Abstract 36892 (T. D. 34920) the articles in question were held dutiable as mirrors under paragraph 95.

**No. 40169.**—Protests 787979, etc., of Wagner Bros. & Co. et al. (New York).

POCKET COMPASSES.—Pocket compasses classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. The compasses in question were held dutiable under paragraph 167. G. A. 7824 (T. D. 35949) followed.

**No. 40170.**—Protest 791951 of A. L. Tuska, Son & Co. (New York).

TENNIS RACKETS—TOYS.—Tennis rackets classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as manufactures of wood at 15 per cent under paragraph 176.

Opinion by SULLIVAN, G. A. On the report of the appraiser that the tennis rackets in question were returned in error, they were held dutiable under paragraph 176, as claimed.

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**No. 40171.**—Protest 803076 of R. U. Delapenha & Co. (New York).

PAPER SNAPPERS.—So-called crackers or snappers invoiced as "cosaques," composed of crape, tissue, and ordinary paper, classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as manufactures of crape paper at 30 per cent under paragraph 323.

Opinion by SULLIVAN, G. A. The articles in question were found to be in the same class as the Halloween novelties passed upon in Abstract 38875. They were held dutiable as manufactures of crape paper under paragraph 323, as claimed.

**No. 40172.**—Protests 787755, etc., of Sussfeld, Lorsch & Co. (New York).

MAGNIFYING GLASSES — MICROSCOPES — OPTICAL INSTRUMENTS.—Magnifying glasses, etc., classified as optical instruments at 35 per cent ad valorem under paragraph 93, tariff act of 1913, are claimed dutiable as microscopes at 25 per cent under paragraph 94.

Opinion by SULLIVAN, G. A. On the authority of Abstract 39936 the articles in question were held dutiable as microscopes under paragraph 94

**No. 40173.**—Protest 800119 of F. B. Vandegrift & Co. (New York).

PHOTOGRAPHIC SCREENS—OPTICAL INSTRUMENTS—PARTS OF CAMERAS.—Merchandise invoiced as "ecrans," consisting of two sheets of plain glass having a coat of gelatin and balsam between them, classified as optical instruments at 35 per cent ad valorem under paragraph 93, tariff act of 1913, is claimed dutiable as parts of photographic cameras at 15 per cent under paragraph 380, or as manufactures of glass at 30 per cent under paragraph 95.

Opinion by SULLIVAN, G. A. It was found that the merchandise is to be attached to a square frame on the lens of the camera, used in taking pictures in colors; that if it were not used violet would overcome every other color, and that the component material of chief value is glass. It was held properly classifiable as part of a camera under paragraph 380. G. A. 7697 (T. D. 35220), affirmed in United States *v.* Bliss (6 Ct. Cust. Appls., 433; T. D. 35980), followed.

**No. 40174.**—Protest 801680 of J. A. Jacques (Boston).

ALUMINUM MEDALS.—Aluminum medals apparently of a religious character, classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of metal under paragraph 167.

Opinion by SULLIVAN, G. A. The medals were found not used for personal adornment, but for devotional purposes, and were held dutiable under paragraph 167.

**No. 40175.**—Protests 801847, etc., of Oelschlaeger Bros. et al. New York).

OPTICAL INSTRUMENTS—MICROSCOPES.—Merchandise invoiced as linen provers, thread counters, readers, Coddington mags., brass tripod mag., floroscopes, linen testers, loupes, and hand reading glasses, classified as optical instruments at 35 per cent ad valorem under paragraph 93, tariff act of 1913, is claimed dutiable as microscopes at 25 per cent under paragraph 94.

Opinion by SULLIVAN, G. A. On the authority of Abstract 39936 the articles in question were held dutiable as microscopes under paragraph 94.

**No. 40176.**—Protest 802956 of American Thermo Ware Co. (New York).

LINEN COUNTERS—OPTICAL INSTRUMENTS—MICROSCOPES.—So-called linen counters classified as optical instruments at 35 per cent ad valorem under paragraph 93, tariff act of 1913, are claimed dutiable as microscopes at 25 per cent under paragraph 94.

Opinion by SULLIVAN, G. A. On the authority of Abstract 39249, the linen counters were held dutiable as microscopes under paragraph 94.

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**No. 40177.**—Protest 802245-59123 of Ecclesiastical Goods Co. (Chicago).

ROSARIES.—The appraiser reports that the rosaries are composed of metal and Job's tears and metal and coco beads, metal chief value. Those valued at over 20 cents per dozen were classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, and those valued at less than 20 cents per dozen were classified as manufactures of metal at 20 per cent under paragraph 167. They are claimed dutiable at 20 or 60 per cent under paragraph 167, at 15 per cent under paragraph 176, or at 10 or 15 per cent under paragraph 385.

Opinion by SULLIVAN, G. A. The protest was submitted without samples and without testimony. It was therefore overruled. United States *v.* Malhami (7 Ct. Cust. Appls., —; T. D. 36493) cited.

**No. 40178.**—Protests 800035, etc., of Britt, Loeffler & Weil (New York).

MALT PREPARATIONS.—Malt preparations put up in packages of less than 2½ pounds gross weight, classified as a medicinal compound at 20 per cent, under paragraph 17, tariff act of 1913, are claimed dutiable as nonenumerated manufactured articles at 15 per cent under paragraph 385.

Opinion by BROWN, G. A. On the authority of Britt *v.* United States (7 Ct. Cust. Appls. —; T. D. 36428) the merchandise was held properly classified under paragraph 17.

**No. 40179.**—Protest 763947 of Adams Express Co. (Boston).

ALPACA LININGS.—Certain linings classified as cloth in chief value of the hair of the Alpaca goat at 40 per cent ad valorem under paragraph 308, tariff act of 1913, are claimed dutiable as cotton cloth under paragraph 252.

Opinion by BROWN, G. A. Protest unsupported; overruled.

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BEFORE BOARD 2, SEPTEMBER 22, 1916.

**No. 40180.**—Protests 759850, etc., of Lines & Warne (New York).

FIGURED COTTON CLOTH.—Certain woven figured cotton cloth, classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913, is claimed dutiable under paragraph 252.

Opinion by COOPER, G. A. On the authority of G. A. 7618 (T. D. 34858), affirmed in United States *v.* Sherman (6 Ct. Cust. Appls., 271; T. D. 35501), the figured cotton cloth was held dutiable under paragraph 252.

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## (T. D. 36690.)

*Drawback on cork disks.*

T. D. 36482 of June 12, 1916, extended to cover the production by the Crown Cork & Seal Co., of Baltimore, Md., of cork disks, waxed.

TREASURY DEPARTMENT, *September 26, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on imported cork disks exported after having been bleached and waxed by the Crown Cork & Seal Co., of Baltimore, Md.

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A manufacturing record shall be kept, which will show, in addition to the usual import data, the lot number of each lot of cork disks bleached and waxed for exportation with benefit of drawback, the net weight of each lot of disks prior to the waxing of the same, and also the weight of the disks after waxing. A sworn abstract from the manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the net weight of the cork disks used prior to waxing.

The sworn statement of the Crown Cork & Seal Co., dated September 5, 1916, is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on bleached and waxed disks exported on and after August 8, 1916.

Respectfully, ANDREW J. PETERS,
(64832.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Baltimore, Md.*

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(T. D. 36691.)

*Embroidered silk fans.*

Appeal directed from decision of the Board of United States General Appraisers of August 29, 1916, G. A. 7956 (T. D. 36654), involving the classification of certain embroidered silk fans.

TREASURY DEPARTMENT, *September 26, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 22d instant, relative to the decision of the Board of United States General Appraisers of August 29, 1916, G. A. 7956 (T. D. 36654), wherein certain embroidered silk fans which had been assessed with duty at the rate of 60 per cent ad valorem under the provisions of paragraph 358 of the tariff act of October 3, 1913, for "articles or fabrics embroidered in any manner by hand or machinery, * * * by whatever name known," were held by the board to be dutiable at the rate of 50 per cent ad valorem under the provision of paragraph 349 of the said act for "fans of all kinds, except common palm-leaf fans."

You are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(103744.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

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## (T. D. 36692.)

### *Pay of laborers in the Customs Service.*

TREASURY DEPARTMENT, *September 26, 1916.*

*To collectors and other officers of the customs:*

Your attention is invited to the provision contained in the act making appropriations for the fiscal year ending June 30, 1916, and prior fiscal years, and for other purposes, approved September 8, 1916, which reads as follows:

Section one of the act entitled "An act fixing the compensation of certain officials in the Customs Service, and for other purposes," approved March fourth, nineteen hundred and nine, shall not prohibit the Secretary of the Treasury from fixing the pay of laborers in the Customs Service at a rate not exceeding $2.50 per day if in so doing the aggregate amount paid to any person in any month does not exceed $70.

ANDREW J. PETERS, *Assistant Secretary.*

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## (T. D. 36693.)

### *Drawback on bottled and kitted olives.*

Drawback on bottled and kitted olives produced by the Quality Packers (Inc.), of New York, N. Y., from olives imported in bulk.

TREASURY DEPARTMENT, *September 28, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on bottled and kitted olives produced by the Quality Packers (Inc.), of New York, N. Y., from olives imported in bulk.

The allowance shall not exceed the net quantity of olives appearing in the bottled and kitted olives, as shown by the sworn statement and schedule of the producers, dated August 17, 1916, which is transmitted herewith.

Drawback may be allowed under these regulations on the articles covered thereby exported on or after May 26, 1916.

Supplemental sworn schedules showing the use of other styles and sizes of containers may be filed, and upon verification thereof drawback may be allowed on bottled or kitted olives produced in accordance therewith.

Respectfully,
(94403-8)

ANDREW J. PETERS,
*Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*



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(T. D. 36694.)

*Drawback on confectionery.*

**Drawback on confectionery manufactured by the Novelty Candy Co., of Chicago, Ill., with the use of imported refined sugar or refined sugar produced in whole or in part from imported raw sugar.**

TREASURY DEPARTMENT, *September 28, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on confectionery manufactured by the Novelty Candy Co. at its factory located at Chicago, Ill., with the use of imported refined sugar or refined sugar produced in whole or in part from imported raw sugar.

A manufacturing record shall be kept, showing in the case of each lot of confectionery manufactured for exportation with benefit of drawback, the lot number and date of manufacture, the quantity of each kind of confectionery produced, and as to each kind of confectionery, the quantity and identity of the refined sugar appearing therein. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The quantity of refined sugar which may be taken as a basis for the allowance of drawback shall not exceed the quantity appearing in the exported confectionery, as shown by the abstract from the manufacturing record.

The sworn statement of the manufacturers, dated August 24, 1916, is transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(97808) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Chicago, Ill.*

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(T. D. 36695.)

*Drawback on sugar.*

**T. D. 36641 of August 23, 1916, amended to provide for filing supplemental sworn statements.**

TREASURY DEPARTMENT, *September 30, 1916.*

SIR: I transmit herewith for filing in your office a supplemental sworn statement executed by the Chocolate Products Co., of Baltimore, Md., dated the 19th instant, and copies of a report by the special agent in connection with allowance of drawback to said company under T. D. 36641, dated August 23, 1916, on sugar used in the manufacture of candies for exportation.

The said Treasury decision is hereby amended to permit the filing by the company of supplemental sworn statements under which,

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upon verification and approval, drawback may be allowed on the articles included therein.

Respectfully, ANDREW J. PETERS,
(100732-7) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Baltimore, Md.*

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(T. D. 36696.)

*Political activity and assessments.*

[Circular No. 64.]

TREASURY DEPARTMENT, *September 29, 1916.*

*To officers and employees of the Treasury Department:*

Your attention is hereby specifically called to the appended draft of a "Warning against activity in politics and the collection of political assessments or contributions by Federal officers and employees," issued by the United States Civil Service Commission.

The department promulgates this warning with approval, and especially cautions all the personnel under the jurisdiction against any violation of the laws, rules, and regulations appertaining to political activity and the illegal collection or payment of political assessments or contributions. Any violation thereof will be summarily dealt with.

A copy of this circular must be posted in every office, bureau, or division under the jurisdiction of the Treasury Department, and no violation of its requirements will be excused on the ground of a lack of knowledge of the prohibitions contained therein.

BYRON R. NEWTON, *Acting Secretary of the Treasury.*

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WARNING AGAINST ACTIVITY IN POLITICS BY FEDERAL OFFICERS AND EMPLOYEES.

1. *Political activity.*

Rule I, section 1, of the civil-service rules reads as follows:

No person in the executive civil service shall use his official authority or influence for the purpose of interfering with an election or affecting the result thereof. Persons who by the provisions of these rules are in the competitive classified service, while retaining the right to vote as they please and to express privately their opinions on all political subjects, shall take no active part in political management or in political campaigns.

(1) The first sentence of the rule applies to all persons in the executive civil service, irrespective of the method of appointment. Presidential appointees are forbidden by statute to use their official authority or influence to coerce the political action of any person or body, to make any contributions for a political object to any other officer of the United States, or to solicit or receive contributions for political purposes or to discriminate among their employees or applicants for political reasons. Otherwise a presidential appointee will be allowed to take such a part in political campaigns as is taken by any private citizen, except that he will not be permitted—

1. To hold a position as a member or officer of any political committee that solicits funds.

2. To display such obstrusive partisanship as to cause public scandal.

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3. To attempt to manipulate party primaries or conventions.
4. To use his position to bring about his selection as a delegate to conventions.
5. To act as chairman of a political convention.
6. To assume the active conduct of a political campaign.
7. To use his position to interfere with an election or to affect the result thereof.
8. To neglect his public duties.

The second sentence of the rule applies to all persons holding positions in the competitive classified service, whether the appointment be permanent or temporary in character, and by departmental action has also generally been made applicable to unclassified laborers. The following are some of the forms of activity which have been held to be forbidden to this class of employees:

Service on political committees; service as a delegate to county, State, or district conventions of a political party; service as officer, representative, or delegate of a political club, or as chairman of a political meeting; activity at the polls on election day; publication of political articles bearing on qualifications of different candidates; the publication or editing of a newspaper in the interests of a political party; the distribution of political literature; making speeches before political meetings or political clubs; circulating of petitions having a political object; service as inspector of elections, ballot clerk, ballot inspector, judge of election, or member of election board; candidacy for or holding of elective office. (See circular of U. S. Civil Service Commission giving information concerning political activity, issue of May, 1916.) It is not to be assumed that other forms of political activity are permissible because they are not mentioned.

2. *Political assessments or contributions.*

The civil-service act provides that "no person in the public service is for that reason under any obligation to contribute to any political fund, or to render any political service, and * * * he will not be removed or otherwise prejudiced for refusing to do so." Section 118 of the Criminal Code provides that no Federal officer or employee shall, directly or indirectly, solicit or receive, or be in any manner concerned in soliciting or receiving, any political assessment, subscription, or contribution from any other Federal officer or employee. Section 120 of the Criminal Code prohibits the discharge, promotion, or degrading of any officer or employee for giving or failing to make any political contribution. Section 121 of the Criminal Code prohibits any Federal officer or employee from making any such political contribution to another Federal officer or employee, and section 119 prohibits the solicitation or receipt of any political contribution in any room or building occupied in the discharge of official duties by any officer or employee of the United States, or on other Federal premises, by any person whatsoever, whether in the public service or not. In connection with this latter provision the Supreme Court has held that a solicitation by letter or circular addressed and delivered by mail or otherwise to an officer or employee of the United States at the office or building in which he is employed in the discharge of his official duties, it is a solicitation within the meaning of the law, the solicitation taking place where the letter was received. Section 122 of the Criminal Code provides that whoever shall violate any provision of the four sections mentioned above shall be fined not more than $5,000, or imprisoned not more than three years, or both.

While persons not in the competitive classified service are not subject to the prohibitions of section 1 of Rule I, the statutes concerning the solicitation or receipt by one officer or employee of political contributions from another officer or employee apply with equal force to all who serve the United States, whether classified or unclassified. By thus serving in the capacity of treasurer of a political club any officer or employee receiving from another officer or em-

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ployee who is a member of the club any fees or dues or other contributions for a political purpose thereby renders himself liable to prosecution for violation of section 118 of the Criminal Code of the United States, and the member so paying him such fees or dues or other contribution for a political purpose violates section 121 of the Criminal Code.

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## (T. D. 36697.)

### *Values of foreign coins.*

[Circular No. 1.]

TREASURY DEPARTMENT, *October 1, 1916.*

In pursuance of the provisions of section 25 of the act of August 27, 1894, I hereby proclaim the following estimate by the Director of the Mint of the values of pure metal contents of foreign coins to be the values of such coins in terms of the money of account of the United States, to be followed in estimating the value of all foreign merchandise exported to the United States during the quarter beginning October 1, 1916, expressed in any such metallic currencies.

Entries of merchandise liquidated upon the values proclaimed herein will be subject to reliquidation upon the order of the Secretary of the Treasury whenever satisfactory evidence shall be produced to him showing that the values in United States currency of the foreign money specified in the invoices were, at the date of certification, at least 10 per cent more or less than the values herein proclaimed.

BYRON R. NEWTON, *Acting Secretary of the Treasury.*

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*Estimate by the Director of the Mint of the values of foreign coins.*

| Country. | Legal standard. | Monetary unit. | Value in terms of United States money. | Remarks.[1] |
|---|---|---|---|---|
| Argentine Republic | Gold | Peso | $0.9648 | Currency: Depreciated paper, convertible at 44 per cent of face value; exchange rate about $0.42½. |
| Austria-Hungary | do | Crown | .2026 | |
| Belgium | Gold and silver | Franc | .1930 | Member of Latin Union; gold is the actual standard. |
| Bolivia | Gold | Boliviano | .3893 | 12½ bolivianos = 1 pound sterling. |
| Brazil | do | Milreis | .5462 | Currency: Government paper; exchange rate about 25 cents to the milreis. |
| British colonies in Australasia and Africa. | do | Pound sterling | 4.8665 | |
| Canada | do | Dollar | 1 0000 | |
| Central American States: | | | | |
| Costa Rica | do | Colon | .4653 | |
| British Honduras | do | Dollar | 1.0000 | |
| Nicaragua | do | Cordoba | 1.0000 | |
| Guatemala, Honduras, Salvador | Silver | Peso | .4969 | Guatemala: Currency, inconvertible paper; exchange rate about 40 pesos=$1. Honduras: Currency, bank notes; exchange rate about $0.35. Salvador: Currency, convertible into silver on demand; exchange rate about $0.42. |
| Chile | Gold | do | .3650 | Currency: Inconvertible paper; exchange rate, approximately, $0.14. |

[1] The exchange rates shown under this heading are not to take the place of the consular certificate where it is available.

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*Estimate by the Director of the Mint of the values of foreign coins*—Continued.

| Country. | Legal standard. | Monetary unit. | Value in terms of United States money. | Remarks.[1] |
|---|---|---|---|---|
| China | Silver | Tael: Amoy | $0.8146 | The tael is a unit of weight; not a coin. The customs unit is the Haikwan tael. The values of other taels are based on their relation to the value of the Haikwan tael. |
| | | Canton | .8122 | |
| | | Chefoo | .7792 | |
| | | Chinkiang | .7958 | |
| | | Fuchau | .7536 | |
| | | Haikwan (customs) | .8289 | |
| | | Hankow | .7622 | |
| | | Kiaochow | .7894 | |
| | | Nanking | .8061 | |
| | | Niuchwang | .7640 | |
| | | Ningpo | .7832 | |
| | | Peking | .7942 | |
| | | Shanghai | .7441 | |
| | | Swatow | .7525 | |
| | | Takau | .8198 | |
| | | Tientsin | .7894 | |
| | | Dollar: Yuan | .5338 | |
| | | Hongkong | .5358 | |
| | | British | .5358 | |
| | | Mexican | .5397 | |
| Colombia | Gold | Dollar | 1.0000 | Currency: Inconvertible paper; exchange rate, approximately, $105 paper to $1 gold. |
| Cuba | do | Peso | 1.0000 | |
| Denmark | do | Crown | .2680 | |
| Ecuador | do | Sucre | .4867 | |
| Egypt | do | Pound (100 piastres). | 4.9431 | The actual standard is the British pound sterling, which is legal tender for 97½ piasters. |
| Finland | do | Mark | .1930 | |
| France | Gold and silver | Franc | .1930 | Member of Latin Union; gold is the actual standard. |
| German Empire | Gold | Mark | .2382 | |
| Great Britain | do | Pound sterling | 4.8665 | |
| Greece | Gold and silver | Drachma | .1930 | Do. |
| Haiti | Gold | Gourde | .9647 | Currency: Inconvertible paper; exchange rate, approximately, $0.16. |
| India (British) | do | Rupee | .3244 | 15 rupees = 1 pound sterling. |
| Italy | Gold and silver | Lira | .1930 | Member of Latin Union; gold is the actual standard. |
| Japan | Gold | Yen | .4985 | |
| Liberia | do | Dollar | 1.0000 | Currency: Depreciated silver token coins; customs duties are collected in gold. |
| Mexico | do | Peso | .4985 | Mexican exchange rate violently fluctuating. |
| Netherlands | Gold | Florin | .4020 | |
| Newfoundland | do | Dollar | 1.0139 | |
| Norway | do | Crown | .2680 | |
| Panama | do | Balboa | 1.0000 | |
| Paraguay | Silver | Peso | .4969 | Currency: Depreciated paper; exchange rate 1,550 per cent. |
| Persia | Gold | Achrefi | .0959 | Silver circulating above its metallic value; exchange value of silver kran, approximately, $0.117. |
| | Silver | Kran | .0915 | |
| Peru | Gold | Libra | 4.8665 | |
| Philippine Islands | do | Peso | .5000 | |
| Portugal | do | Escudo | 1.0805 | Currency: Inconvertible paper; exchange rate, approximately, $0.70½. |
| Roumania | do | Leu | .1930 | |
| Russia | do | Ruble | .5146 | |
| Santo Domingo | do | Dollar | 1.0000 | |
| Servia | do | Dinar | .1930 | |
| Siam | do | Tical | .3709 | |
| Spain | Gold and silver | Peseta | .1930 | Valuation is for the gold peseta; currency is silver circulating above its metallic value; exchange value, approximately, $0.20. |
| Straits Settlements | Gold | Dollar | .5678 | |
| Sweden | do | Crown | .2680 | |
| Switzerland | do | Franc | .1930 | Member of Latin Union; gold is the actual standard. |
| Turkey | do | Piaster | .0440 | 100 piasters equal to the Turkish £. |
| Uruguay | do | Peso | 1.0342 | |
| Venezuela | do | Bolivar | .1930 | |

[1] The exchange rates shown under this heading are not to take the place of the consular certificate where it is available.

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(T. D. 36698—G. A. 7964.)

*Angora yarn.*

**Yarn made of the hair of the Angora rabbit, though known in the trade as Angora wool yarn, is properly classified under paragraph 348, act of 1913, as a manufacture of fur, and not under paragraph 307 as a yarn made of the hair of the Angora goat, alpaca, and other like animals.**

United States General Appraisers, New York, September 27, 1916.

**In the matter of protest 747712 of Bloomingdale Bros. against the assessment of duty by the collector of customs at the port of New York.**

[Affirmed.]

*Comstock & Washburn* (*Albert H. Washburn* of counsel) for the importers.

*Bert Hanson*, Assistant Attorney General (*Charles D. Lawrence*, special attorney), for the United States.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers).

Brown, *General Appraiser:* This suit is brought to determine whether certain yarn made from the hair of the Angora rabbit, of a soft texture and silk-like luster, is properly dutiable under paragraph 348 of the act of 1913, reading—

348. Furs dressed on the skin, not advanced further than dyeing, 30 per centum ad valorem; plates and mats of dog and goat skins, 10 per centum ad valorem; manufactures of furs, further advanced than dressing and dyeing, when prepared for use as material, joined or sewed together, including plates, linings, and crosses, except plates and mats of dog and goat skins, and articles manufactured from fur not specially provided for in this section, 40 per centum ad valorem; * * *.

as classified by the collector, or under paragraph 307, reading—

307. Yarns made of the hair of the Angora goat, alpaca, and other like animals, 25 per centum ad valorem.

as claimed by the protestants.

It is stated by the appraiser's report to be commercially and commonly known as Angora wool yarn and used principally in articles for babies' wear owing to its fineness.

There is a further claim under paragraph 305 at 15 per cent as hair of the Angora goat, alpaca, and other like animals, but as this merchandise is not hair but yarn made from hair, that claim is plainly untenable.

A general claim is also made under paragraph 385 at 15 per cent as a nonenumerated manufactured article.

This protest was submitted with several others in which there is a claim for 5 per cent discount and a stipulation as to the registry of the vessel. In this particular case, however, the claim for 5 per cent discount has been waived. This protest is therefore taken up for decision, the others being retained and in effect suspended to await the decision of the Supreme Court in the Five Per Cent Cases.

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Mr. Julian A. Harris, for the importers, testified he had been handling this class of goods since 1898 in wholesale quantities, and from his experience in the trade stated that he agreed with the statement of the appraiser that the merchandise is commercially known as Angora wool yarn, and that it is principally used for babies' wear. His testimony was corroborated by Mr. Edwin A. Fleischer, a dealer in worsted and woolen yarns in Philadelphia, who said he had handled it very generally throughout the United States for five years.

He also stated that he had visited one of the largest Angora rabbit farms in France; that the animal is fully as large as a cat, and for this purpose the wool must be very long; it is taken from the back of the animal where the long hairs are; the white and gray are used in their natural colors, and the brownish is dyed; that the shorter hairs are combined with sheep's wool and used for manufacturing Angora garments, and that this particular Angora wool can only be made by hand; adding:

> The way we put this up from abroad is in small balls. We sell them to the jobbers and the department stores. Even the customer knows this article is Angora wool, nothing else.

Mr. Joseph Seaver, examiner of wool, who, previously to going into the Government service, had a wide experience in the wool business, testified that he had been familiar with the goods for nine years, during which time his classification had been uniform as a manufacture of fur. He compared it with illustrative Exhibit B, introduced by the Government, which was the subject matter of decision in G. A. 527 (T. D. 11084), and said it was the same with only a difference in color; that from his experience and from literature on the subject the soil, climate, food of the animals, or something else, makes the goats, the rabbits, the cats, the rats, and the mice in that country about Angora, in Turkey, have very soft, lustrous fur, but that, as an animal, the Angora goat is very different from the Angora rabbit, and their only point of similarity is in this soft, lustrous character of the hair.

Prof. Bowman, in his work on the "Structure of the Wool Fiber" (1885), referred to by Mr. Seaver, under the title "Mohair," says (p. 125):

> Simultaneously with the great increase in the demand for luster goods, which led to the rapid rise of the alpaca trade, there has been a very large use of another and allied fiber—mohair.
>
> This fiber is the wool of the Angora goat, a creature whose native home is the mountainous districts in the interior of Asia Minor, and of which Plate XVIII gives the general features. The center of the district is the town of Angora, about 220 miles from Constantinople, and from which the goat derives its name. The climate and soil seems to be peculiarly favorable to the growth of long silky hair, as many of the cats, dogs, and even the rabbits

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and rats of this region are famous for it. The Angora goat is a fine, noble looking animal, with large horns, which are curved back over the neck, and its fleece is composed of long, beautiful, silky hair, varying in length from 6 to 8 inches or more. This hair, however, is a true wool, since it possesses a curly structure, with a fine development of the epidermal scales and a bright metallic luster. From the earliest times this district has been famous for the production of a superior fine yarn and fine wool goods. Endeavors have been made to acclimatize this goat elsewhere, but for a long time without success, as, when removed from its native mountains, the wool deteriorated and lost its distinctive features.

They have, however, been introduced into Cape Colony, where in its pure state and mixed with the native African goat, it produces a fleece which even exceeds in quality the native mohair, and large quantities of this wool are now exported to England. As we have already noticed, they have also been introduced into the United States, and large flocks, which are continually increasing, are now to be found in suitable positions.

But Prof. Bowman, in the same work, distinguishes carefully the structural characteristics of the hair of the rabbit and that of the Angora goat.

The question turns upon the facts as above stated as to whether Congress intended to include this silky, lustrous rabbit hair in the expression used in paragraph 307, "yarns made of the hair of the Angora goat, alpaca, and other like animals." That is, whether the "like animals" must be something really similar as animals to the Angora goat or the alpaca goats, or whether the similarity was solely to consist of their producing a kind of hair which, though different in structure and coming from an entirely different animal, was so similar in commercial characteristics as to be known in the trade as Angora yarn or Angora wool.

If Congress had said "yarns made of Angora" simply, then, as this undoubtedly and admittedly is known as Angora material in the trade, the argument would be very strong that Congress had intended to include it under paragraph 307. But the expression "made of" would seem, at the beginning, to preclude the use of the commercial-designation rule and limit the meaning of the words that follow to words of actual description. And the addition of the word "goat" would seem to further limit the class of animals to those that bear some real striking similarity to a goat as an animal.

And we therefore hold that the insertion of these words precludes the idea of applying the rule of commercial designation in the ordinary sense and establishes the congressional intent to exclude the article here in controversy from paragraph 307. This without considering the fact that for many years this merchandise had been classified as fur, which custom might not in itself be necessarily controlling, but which in the circumstances tends to support the conclusion here reached.

Judgment is therefore rendered in favor of the defendant and the protest is overruled.

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(T. D. 36699—G. A. 7965.)

*Steel tubes.*

Articles made from steel blooms which had been cut into short lengths, then pierced lengthwise through the center, after which they were heated and rolled over a cast-iron plug to certain specific measurements, are finished tubes within the meaning of paragraph 127, act of 1913.

United States General Appraisers, New York, September 27, 1916.

In the matter of protests 779587, etc., of J. T. Ball *et al.* against the assessment of duty by the collectors of customs at the ports of Cleveland and New York.

[Affirmed.]

*Masters & Levett* (*B. A. Levett* of counsel) for the importers.

*Bert Hanson*, Assistant Attorney General (*Martin T. Baldwin*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

FISCHER, *General Appraiser:* The articles in question are made of steel and are tubular in shape. They are of various dimensions, the largest having an inside diameter of about 4 or 5 inches with walls about one-half inch thick, and the smallest an inside diameter of about 1 inch with walls correspondingly thin. Duty was levied thereon at the rate of 20 per cent ad valorem under the provision in paragraph 127 of the act of 1913 for "tubes, finished," and they are claimed to be properly dutiable at the rate of 15 per cent ad valorem under paragraph 110 of said act as steel bars. Protest 794598 alleges an alternative claim that the articles covered thereby consist of steel bars dutiable at the rate of 8 per cent ad valorem under said paragraph 110.

This latter paragraph, in so far as it is pertinent hereto, reads as follows:

110. Steel bars, * * * all of the foregoing, if made by the Bessemer, Siemens-Martin, open-hearth, or similar processes, not containing alloys, such as * * * chromium, * * * 8 per centum ad valorem; * * * billets and bars and tapered or beveled bars; * * * all the foregoing when made by the crucible, electric, or cementation process, either with or without alloys, and finished by rolling, hammering, or otherwise, and all steels by whatever process made, containing alloys such as * * * chromium, * * * 15 per centum ad valorem.

The protests must be overruled for the following reasons:

(1) The only steel bars which are provided for at the rate of 15 per cent ad valorem in paragraph 110 are those which are made by the crucible, electric, or cementation process. Neither of those processes was employed in the manufacture of the present merchandise.

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(2) The only steel bars which are provided for in said paragraph 110 at the rate of 8 per cent ad valorem are those which are "made by the Bessemer, Siemens-Martin, open-hearth, or similar processes, not containing alloys, such as * * * chromium, * * * and similar alloys." The steel of which the articles in question is composed was made by the Siemens-Martin open-hearth process, but it contains chromium as an alloy. This latter fact, therefore, precludes the merchandise from being classified for duty at the rate of 8 per cent ad valorem under said paragraph.

(3) The articles in question are not bars at all, but tubes. Three commercial witnesses have so testified, and their testimony is not overcome by competent proof. Moreover, they have testified that the tubes are finished.

Furthermore, this testimony is amply supported by the decidedly tubular appearance of the representative samples of the merchandise which have been offered in evidence herein, as well as by the description in the record of the process employed in their manufacture. As outlined by the witnesses, the articles are produced as follows:

The steel is first cast into square ingots. These square ingots are rolled into round blooms. These blooms are cut up into short lengths, and the short lengths are pierced under a steam hammer which expands but does not lengthen them. They are then heated up again and rolled in the same type of mill as you would roll solid bars, over a cast-iron plug. After the first rolling they are pickled and ground to remove any surface defects. They are then rolled again to the size desired, after which they are again pickled and annealed and, if necessary, ground again, after which a piece is cut from each end, which is hardened and fractured, and if those fractures are satisfactory the material is ready for shipment.

It further appears of record that these same articles may be produced as a result of having been drawn through dies, instead of rolled. Similar articles to those here under consideration which were made by having been drawn through dies have heretofore been held to be properly classifiable as finished tubes. To this effect is the ruling of this board in G. A. 4689 (T. D. 22126), wherein it was said:

> From the testimony in the present case it appears that a hollow steel billet is a short, heavy piece of steel which has been pierced through its entire length, and that such articles are made for the purpose of drawing out into tubes of a required size. When so pierced the walls of the hollow billet are very thick, and when the billet is drawn these walls are naturally reduced to the size desired. After the pierced block or billet has been subject to a process of drawing, it is no longer a billet, but is a tube.

On appeal, that ruling was affirmed in Page *v.* United States (113 Fed., 1006).

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Again, in G. A. 5161 (T. D. 23793), the same issue was determined by this board upon the authority of the ruling in the Page case, *supra*, the board holding that—

By virtue of those rulings, all tubes which may have rough or ragged ends are, by reason of their recognition in trade and commerce, dutiable as finished tubes, for, while it is true that such ends have not a finished appearance, yet such articles are finished as tubes.

In this latter opinion the board, further commenting upon its previous ruling in G. A. 4689 (T. D. 22126), *supra*, said:

The evidence before the board in G. A. 4689 (T. D. 22126) showed that tubes are generally cut up by the consumer into the particular lengths he may require for the particular article he may be making; and it is because of that fact that tubes are commonly delivered with ragged or rough ends as completed and finished tubes. The mere fact that the purchaser of the tubes here in question intends to have them subjected to further process of drawing, in order that they may be converted into bicycle tubes, does not alter the case. All that we can consider is the question whether or not these articles are finished tubes as imported. We found in the case above cited that they were finished tubes, and we reaffirm and follow that ruling here.

The facts established in the present case require that the decision of the collector in each instance be affirmed. The protests are therefore severally and in all respects overruled.

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## (T. D. 36700—G. A. 7966.)

### *Shuttles—Parts of embroidery machines.*

Shuttles composed entirely of metal and used chiefly as parts of embroidery machines are properly dutiable under paragraph 167, act of 1913, as manufactures of metal not specially provided for, rather than entitled to free entry under paragraph 441 of said act as parts of sewing machines. Their exceptional and occasional use on sewing machines will not serve to alter their proper classification as parts of embroidery machines.

United States General Appraisers, New York, September 27, 1916.

In the matter of protest 784949 of Durbrow & Hearne Manufacturing Co. against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

*Masters & Levett* (*Benjamin A. Levett* of counsel) for the importers.

*Bert Hanson*, Assistant Attorney General (*Martin T. Baldwin*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

FISCHER, *General Appraiser:* The merchandise in question consists of shuttles which the Government contends are used on embroidery machines, but which are claimed by the importers to be used on sewing machines. Duty was levied thereon at the rate of 20 per cent

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ad valorem under paragraph 167 of the act of 1913 as manufactures of metal not specially provided for, and it is claimed by the importers that said articles are properly entitled to free entry under paragraph 441 of said act as parts of sewing machines.

The proof offered on behalf of the importers is contained in the testimony of Robert J. Hearne, the secretary and treasurer of Durbrow & Hearne Manufacturing Co., the importing corporation.

This witness testified that he has been connected with said corporation for the past 35 years during all of which time he has been familiar with articles of the character here under consideration and the purposes for which they are used, as well as with ordinary family sewing machines, which latter he has also handled during all of said period of years; that he has never sold shuttles of the type in question for use in said sewing machines, but has during the past 7 or 8 years sold them for use in other than family sewing machines; that the particular shuttles in question are generally employed for use in gang sewing machines where a number of shuttles are used at the same time; that he has sold them for use in embroidery machines, the large gang machines which employ from 500 to 1,000 of these shuttles, and which are generally known as shuttle embroidery machines; that he is familiar with the various classes of machines which do embroidery work; and that it is possible to embroider on the ordinary family sewing machine with the aid of a shuttle similar to those here in question; that the difference between an embroidery machine and a sewing machine is to be found in the method employed for moving the fabric in the production of the pattern, but that there is no difference whatever in the shuttle which is used on both machines, there being no way of determining for which particular class of machines the shuttles are primarily constructed and designed.

Further in his testimony this witness characterized the Schiffli machine as a gang of sewing machines, although he concedes it is the best-known and most chiefly used of all embroidery machines. He also stated that it was only during the past three or four years that he had imported shuttles of the particular kind involved herein, and that of the 15,000 so imported he had sold 10,000 to users of embroidery machines; that when used on sewing machines this shuttle operates to carry the lower thread through the loop which is formed in the upper or needle thread and produces a stitch, in the production of which the shuttle vibrates or reciprocates backward and forward, as the case may be, and that the operation of the shuttle and the resulting stitch is absolutely the same whether performed on a sewing or on an embroidery machine.

E. H. Weldon, the United States examiner at the port of New York who has passed the present and similar importations, appeared

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on behalf of the Government and testified that he has been passing merchandise of the character here in question for the past eight or nine years, and for this particular corporation for the past four or five years; that during the latter period there have been imported at the port of New York and officially passed upon by him each year about 200,000 shuttles similar to those involved herein, 75 per cent of them having been imported with embroidery machines, the remainder having been brought in unaccompanied by the machines; that in all those years he had never seen said shuttles imported with sewing machines; that it requires 1,050 of said shuttles to fill a single 15-yard embroidery machine and from 750 to 800 to fill a 10-yard embroidery machine, whereas sewing machines can use but 1 shuttle apiece.

It will be observed that the testimony clearly and conclusively establishes the contention of the Government that these shuttles are used chiefly on embroidery machines, and chief use is the one essential and determinative fact which must govern in the decision of this case.

Nor will it in anywise avail these importers to contend, as they here do, that embroidery machines consist merely of gang sewing machines, and that there is no real difference between sewing and embroidery machines. Evidently Congress thought otherwise, since we find that in the present tariff law sewing machines are accorded free entry whereas a duty of 25 per cent ad valorem is imposed on embroidery machines. The recognized legislative and commercial difference between the two classes of machines was discussed by this board in the matter of protest 702360 of O. J. Ahlstrom, a case which arose under the tariff act of 1909.

In its opinion in that case, G. A. 7582 (T. D. 34607), this board said:

> Whether a sewing machine is an embroidery machine, or vice versa, must be determined by a knowledge of the character of the construction of its mechanism and of the primary purpose for which it was designed. It is a matter of common knowledge that a great number, if not all, of the various types of ordinary sewing machines, by the manipulation or adjustment of one or more of their attachments, may be rendered competent to perform fancy stitching or embroidered work. But such an extraordinary, exceptional, or unusual use to which such a machine might possibly be made adaptable could hardly serve as a potent factor in determining its commercial or dutiable status. The fact remains that it is a machine primarily constructed and designed for sewing fabrics—a sewing machine—and any other use thereof is purely incidental and devised merely to meet some household emergency. Such a sewing machine would be wholly inadequate to do the work for which the embroidery machine in trade and commerce is specially constructed and designed. As sewing machines are specially constructed and primarily intended to sew fabrics,

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so, also, is it the chief function of embroidery machines to stitch upon fabrics and other articles various forms of fancy and embroiderd needlework.

Furthermore, the board pointed out that the proof in that case disclosed the fact that, during the statutory period within which free entry was accorded embroidery machines, articles precisely similar to those there under consideration were passed free of duty by the collector upon the representation of importers that they were embroidery machines; and that from and after the expiration of such free period, when embroidery machines became subject automatically to a 45 per cent ad valorem rate of duty, the importers forthwith abandoned their former practice of claiming the articles as embroidery machines, and then insisted that they were ordinary sewing machines and therefore entitled to the lower rate of 30 per cent ad valorem.

To grant the contention of the importers made herein would require that this board hold, as a matter of law, that the Schiffli machine, for example, although conceded by the importers to be the best known and most used of all embroidery machines, was, nevertheless, not contemplated by Congress as covered by a specific provision for embroidery machines, for the reason, as stated in the testimony of the witness for the importers, that it is a machine which is composed of a group or "gang" of sewing machines. It is needless to add that such a construction would virtually result in a circumvention of the law, in so far, at least, as embroidery machines are concerned. In fact such an argument, carried to its logical conclusion, would require that rope should be held to be classifiable as yarn because it is composed of a collection of yarns.

Again, the statement of the importers that the Schiffli machine is an embroidery machine but not so classifiable is somewhat paradoxical, to say the least. And for us to so hold would not alone do violence to the purpose of the statute, but would actually result in rendering entirely nugatory and of no effect the specific provision in the present law for embroidery machines.

Inasmuch, therefore, as Congress and the trade have established a clear and definite line of demarcation between sewing machines and embroidery machines, and as these shuttles are shown to be chiefly employed as parts of embroidery machines, it must necessarily follow that, in the absence of a specific provision for such parts, the said shuttles, being composed entirely of metal, are relegated for dutiable classification to the general provision in paragraph 167 for manufactures of metal not specially provided for, as classified by the collector.

The protest is therefore overruled in all respects and the decision of the collector is affirmed.

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## (T. D. 36701—G. A. 7967.)

### *Covers for display albums.*

**Fashion display album covers composed of surface-decorated paper and having on the outside an insignificant amount of printed matter are properly dutiable at the rate of 35 per cent ad valorem under paragraph 324, act of 1913, as manufactures of surface-decorated paper rather than at the rate of 15 per cent ad valorem under the provision in paragraph 329 of said act for printed matter.**

United States General Appraisers, New York, September 27, 1916.

**In the matter of protest 787895 of Sidney J. Stern Co. against the assessment of duty by the collector of customs at the port of New York.**

**[Affirmed.]**

*Thaddeus S. Sharretts* (*Samuel T. Siegel* of counsel) for the importers.

*Bert Hanson*, Assistant Attorney General (*Martin T. Baldwin*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

FISCHER, *General Appraiser:* The articles in question are composed of decorated paper and are used as covers for display albums. Duty was levied thereon at the rate of 35 per cent ad valorem under paragraph 324 of the act of 1913 as manufactures of decorated paper, and they are claimed to be dutiable at the rate of 15 per cent ad valorem under paragraph 329 of said act as printed matter, or at the rate of 25 per cent ad valorem under paragraph 332 of said act as manufactures of paper.

An examination of the sample of the merchandise in evidence shows the same to consist of paper covers composed of decorated paper. Printed in various colors on the outside of said covers is a picture and the name "Sidney J. Stern Co. (Inc.)." Each of the covers is accompanied by a loose insert in the form of a folded flyleaf of the same dimensions as the cover. Printed on the outside of this insert is a picture and the words "Sidney J. Stern Co. (Inc.), importers, 12 Rue Gaillon, Paris, 11 East Thirty-sixth Street, New York, fall and winter models from the leaders of fashion," with ornamental borders printed in gold at the top and bottom of the leaf. The inside of the insert is blank and contains no printing whatever.

It is also apparent from the testimony that the importers intend using these articles as covers for albums in which it is proposed shall be inserted and permanently bound pictures to be made in this country of the various models of the fashions to be exhibited and displayed at their openings. It is likewise evident that the insignificant amount of printed matter on such covers serves no other purpose than to give to the latter an ornamental and attractive appearance. This printed matter is therefore incidental and secondary to the main object or purpose for which the covers are designed, and hence it may

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be entirely eliminated from consideration as a factor in determining the tariff status of the articles. At any rate, such is the uniform trend of the decisions of this board and the courts in passing on like merchandise. It is now well-settled law that where, as in the case of the present merchandise, the printed matter is clearly an insignificant and incidental feature in the article, it will not be permitted to control the classification of the latter under the tariff law.

Thus, in G. A. 4441 (T. D. 21175), certain book covers composed of paper and Russian leather, the latter chief value, were held not to be classifiable as printed matter, notwithstanding certain printed words appeared on the covers. The board there said:

> The design of the articles is to protect and preserve and to render attractive in appearance the books which they are intended to cover. In point of value and as an element of quantity the printed words are insignificant and can not be regarded as a controlling factor in classification.

To a like effect is the ruling of this board in G. A. 5606 (T. D. 25087), affirmed without opinion in Kraut *v.* United States (134 Fed., 701; T. D. 25829) and Kraut *v.* United States (142 Fed., 1037; T. D. 26946). There the merchandise consisted of paper bags elaborately printed with advertising matter relating to the goods intended to be packed and sold therein. Of these bags the board, quoting from a previous unpublished decision in the matter of protest 78671f, of Adolf Kraut, said:

> The fact that the bags have printed matter thereon will not make them dutiable under paragraph 403. The articles are paper bags, and have become by a process of manufacture a distinct article for use as such, and the printing thereon is merely incidental thereto and is not a controlling feature.

These and like decisions since rendered are decisive of the claim alleged herein under paragraph 329.

No less erroneous, in our judgment, is the contention of the importers that the covers in question are properly classifiable as manufactures of paper under paragraph 332. The proof conclusively establishes that they are more than mere manufactures of papers; they are manufactures of a specific kind of paper, to wit, surface decorated paper, and being articles so composed they are specially provided for under paragraph 324, as classified by the collector.

The protest is therefore overruled in all respects and the decision of the collector affirmed.

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(T. D. 36702—G. A. 7968.)

*Camping knives.*

Camping knives which have folding blades and spoon and fork attachments are specifically provided for in paragraph 128, act of 1913, under the provision for "all knives by whatever name known, * * * which have



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**folding or other than fixed blades or attachments," and as such are dutiable thereunder according to their value per dozen.—G. A. 5693 (T. D. 25335) distinguished.**

United States General Appraisers, New York, September 27, 1916.

**In the matter of protest 788292 of Wilfred Schade Forwarding Co. against the assessment of duty by the collector of customs at the port of St. Louis.**

[Affirmed.]

*Wilfred Schade* for the importers.

*Bert Hanson*, Assistant Attorney General (*Samuel Isenschmid*, special attorney), for the United States.

**Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).**

FISCHER, *General Appraiser:* This protest covers camping knives which have folding blades and spoon and fork attachments. Duty was levied upon the merchandise at the rate of 55 per cent ad valorem under the provision in paragraph 128 of the act of 1913 for "all knives by whatever name known, including such as are denominatively mentioned in this section, which have folding or other than fixed blades or attachments, * * * valued at more than $1 per dozen." It is claimed that said articles are properly dutiable at the rate of 20 per cent ad valorem under paragraph 167 of said act as manufactures of metal not specially provided for.

No testimony has been introduced by the importers in support of their contention, but the sample of the merchandise shows the same to be practically indentical with the camping knives involved in the Kastor case and covered by our decision G. A. 5693 (T. D. 25335). The article is in the form of a pocketknife, and has, besides a cutting blade and a three-prong fork which fold into the handle in the usual manner, a spoon that is hinged to the handle, but folds up outside of the handle, fitting snugly against it. The article is so constructed that it can be separated into three parts and the said parts used as a knife, a fork, and a spoon, respectively.

In the Kastor case, *supra*, we held that knives of this character were not properly classifiable as pocketknives, since it was there shown that they were usually carried in lunch baskets, being too large and cumbersome to be carried in the pocket. That decision, however, was rendered under the tariff act of 1897, which did not contain the broad and comprehensive language found in paragraph 128 of the present act. The board's ruling in G. A. 5693, *supra*, is therefore wholly inapplicable to the present law.

The knives in question are clearly camping knives which have folding or other than fixed blades or attachments, and as such they are specifically covered by the provision in paragraph 128 under which they have been classified by the collector. That provision is framed in language which is intended to extend to and

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include within its meaning all knives by whatever name known which have folding or other than fixed blades or attachments.

The protest is therefore overruled and the decision of the collector affirmed.

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## (T. D. 36703—G. A. 7969.)

### *Containers.*

CONTAINERS OF CARBONIC-ACID GAS.

Small steel vessels oval in shape, approximately 2 inches in length and 1 inch in diameter, with air-tight screw tops, charged with carbonic-acid gas, are such containers as are provided for in paragraph R of section 3, tariff act of 1913, and therefore not a subject of appraisement. It is the duty of the collector to ascertain, fix, and decide their value and assess duty upon them accordingly.—United States *v.* Spingarn Bros. (5 Ct. Cust. Appls., 2; T. D. 34002).

United States General Appraisers, New York, September 29, 1916.

In the matter of protest 799819 of R. F. Downing & Co. (Inc.) against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

*Strauss & Hedges* (*Allan R. Brown* of counsel) for the importers.

*Bert Hanson*, Assistant Attorney General (*Samuel Isenschmid*, special attorney), for the United States.

Before Board 3 (WAITE and HAY, General Appraisers).

HAY, *General Appraiser:* The protestant in this case imported a large quantity of carbonic-acid gas contained in small steel vessels, oval in shape, approximately 2 inches in length and 1 inch in diameter, with an air-tight screw top. No question is raised as to the dutiable character of the carbonic-acid gas, nor is it denied that the capsules or containers, by whatever name they may be called, are also dutiable. They were enumerated upon the invoice and the importers entered them at what they believed to be their value. No advance was made in the value of the carbonic-acid gas, but the appraiser advanced the containers by adding to the entered value, to wit, £47 4s. 2d., £9 2s. 2d. Upon this value the entry was liquidated and additional duty assessed by the collector. The protestants contend that the containers are not part of the merchandise and that they are dutiable only as containers, and hence the rule with reference to packing charges applies, and the cost of the containers rather than their value is the standard for ascertaining the duty, and such action is one for the collector and not the appraiser. The testimony shows that the containers in question do not pass with the goods into consumption or become the property of the consumer, but that they are returned to England to be filled many times, and that the con-

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tainers in question in this case had once before been filled with carbonic-acid gas and imported in that condition from England. The sole question in the case therefore is, Are these vessels in which the carbonic-acid gas was imported such imported merchandise as is subject to an ad valorem duty, and had the appraiser power to ascertain and fix their value as ordinary merchandise, or, are they such merchandise as is made dutiable by the following provision of paragraph R of section 3, act of 1913?—

Including the value of all cartons, cases, crates, boxes, sacks, casks, barrels, hogsheads, bottles, jars, demijohns, carboys, and other containers or coverings, whether holding liquids or solids, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States.

There is nothing in the record in this case which in our judgment distinguishes the capsules or containers of this gas from the bottles, jars, demijohns, etc., that are referred to in the paragraph of law just above quoted. The capsules are as essentially the containers of the merchandise as if it were a liquid or a solid substance, and under the rule laid down in United States *v.* Spingarn Bros (5 Ct. Cust. Appls., 2; T. D. 34002) they are not a subject of appraisement, but it is the duty of the collector to ascertain, fix, and decide their value and assess duty upon them accordingly. The provision of law which provides for additional duty where the appraised value exceeds the value declared in the entry should therefore not be applied in this case. The protest is sustained and the collector directed to reliquidate the entry, omitting the additional duty.

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## *Abstracts of decisions of the Board of General Appraisers.*

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*Board 1*—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

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BEFORE BOARD 1, SEPTEMBER 25, 1916.

**No. 40181.**—Protests 763668, etc., of F. B. Vandegrift & Co. (Philadelphia).

OILS.

MCCLELLAND, *General Appraiser:* The merchandise involved was returned as consisting of a combination of distilled oils and assessed with duty at the rate of 20 per cent ad valorem under the provisions of paragraph 46 of the tariff act of 1913. The grounds of objection to this assessment, as stated in the protests, are as follows:

Said merchandise is a low-grade oil or grease, and is not of the character of the high-priced oils obtained by distillation. It is more aptly provided for at 15 per cent under paragraph 44 providing for rendered oils and greases, or at the same rate under paragraph 45 or 5. It is alternatively claimed that it should be free of duty under paragraph 498.

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There were three separate trials of these protests at the port of Philadelphia, and in all of them the record made on the trial of protests 745705, etc., of the same importer was, on motion of protestants, incorporated with and made part of the records in these cases. The witness Fancourt, for protestants, takes issue with the appraiser's report in one of the cases that the oils in question consist of a combination of distilled oils used for textile fabrics, and states that such oils are used for lubricating wool before it is spun. This witness on the trial in protest 745705, supra, testified as follows:

Q. Are there covered by the protests two different grades of oils or kinds of oil?—A. Yes.

Q. One light and one heavier and opaque?—A. Yes.

Q. Do you make any protest claim on the transparent or light oil?—A. No; on the heavier. The protest claim is limited to the opaque oil.

On the trial of protests 771683, etc., counsel for protestants made the following statement for the record:

At this point I might state that we make no claim on the 50 barrels of emulsified wool oleine in protest 771683, invoice No. 18887. The protest claim is limited to the light-colored grease oil imported in barrels.

We find upon examining the official papers with protests 745705, etc., supra, that the oil there in controversy is described on the invoices covered by protests 745725/6 and 748419 simply as "grease oil." The other three protests, 745705, 745724, and 748419, being formally submitted without proof as to the merchandise covered thereby.

From every viewpoint the combined record is unsatisfactory. Even as to the so-called opaque oil, while the testimony of the Government chemist is vague and indefinite and, standing alone, would not support the collector's classification, yet the testimony of the importers' witnesses is not sufficiently clear and convincing to overcome the presumption of regularity which attaches to the collector's action. A feature of the combined record is that while in that part of it made up at the trial in protests 745705, etc., the claims as to all light oils are waived, counsel for protestants on the trial of protests 771683, etc., states that "the protest claim is limited to the light-colored oil."

On the record as it stands the protests must in all respects be overruled.

Decision of collector affirmed in each case.

**No. 40182.**—Protest 793279 of Fritzsche Brothers (New York).

GUM STYRAX.—Merchandise invoiced as gum styrax liquid is claimed dutiable at 10 per cent ad valorem. The protest, however, does not name the paragraph.

Opinion by McCLELLAND, G. A. Upon stipulation of counsel that the merchandise is of the same character as the gum styrax passed upon in Abstract 39788 the commodity in question was held dutiable at 10 per cent under paragraph 9.

**No. 40183.**—Protest 788154 of P. L. Cherry & Co. (Portland, Oreg.).

TILES.—Merchandise invoiced as common paving tiles, classified at 5 cents per square foot, is claimed dutiable at 1½ cents under paragraph 72, tariff act of 1913.

Opinion by McCLELLAND, G. A. The sample in this case was found to consist of a tile one-half of 1 inch thick, 2 inches wide, and 6 inches long, light brown, dotted with small dark spots, having a mottled or granite effect in color. It was held properly classified at 5 cents per square foot under paragraph 72.

**No. 40184.**—Protest 787275 of Favor Ruhl & Co. (New York).

VARNISH.—Varnishes classified at 20 per cent ad valorem under paragraph 17, tariff act of 1913, are claimed dutiable at 10 per cent under paragraph 58.

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Opinion by BROWN, G. A. On the authority of Abstract 39354 the varnishes in question were held dutiable under paragraph 58.

**No. 40185.**—Protests 786473, etc., of Hensel, Bruckmann & Lorbacher (New York).

COAL-TAR PRODUCTS.—Merchandise classified as coal-tar colors at 30 per cent ad valorem under paragraph 20, tariff act of 1913, is claimed dutiable as coal-tar products at 15 per cent under paragraph 21.

Opinion by BROWN, G. A. On the authority of United States *v.* Badische (5 Ct. Cust. Appls., 226; T. D. 34400) the commodity in question was held dutiable as coal-tar products under paragraph 21.

**No. 40186.**—Protest 793773 of Britt, Loeffler & Weil (New York).

MALT PREPARATIONS.—Malt preparations put up in packages of less than 2½ pounds gross weight, classified as medicinal compounds at 20 per cent ad valorem under paragraph 17, tariff act of 1913, are claimed dutiable as nonenumerate manufactured articles at 15 per cent under paragraph 385.

Opinion by BROWN, G. A. The malt preparations in question were held properly classified under paragraph 17. Britt *v.* United States (7 Ct. Cust. Appls., —; T. D. 36428) followed.

**No. 40187.**—Protest 802796 of Thomas Nevin (New York).

MEDICINAL PREPARATIONS.—Merchandise classified as a medicinal compound at 20 per cent ad valorem under paragraph 17, tariff act of 1913, is claimed dutiable as a nonenumerated manufactured article at 15 per cent under paragraph 385.

Opinion by BROWN, G. A. On the authority of Britt *v.* United States (7 Ct. Cust. Appls., —; T. D. 36428) the preparations in question were held properly classified under paragraph 17.

**No. 40188.**—Protests 801666, etc., of A. Walker & Co. et al. (New York).

MOHAIR DRESS GOODS.—Mohair dress goods classified as in chief value of the hair of the Angora goat, at 40 per cent ad valorem under paragraph 308, tariff act of 1913, are claimed dutiable as cloth in chief value of wool, at 35 per cent under paragraph 288, or as wool dress goods at the same rate under paragraph 290.

Opinion by BROWN, G. A. On the authority of Rosenberg *v.* United States (7 Ct. Cust. Appls., —; T. D. 36510), affirming G. A. 7741 (T. D. 35541), the dress goods in question were held properly classified under paragraph 308.

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BEFORE BOARD 2, SEPTEMBER 25, 1916.

**No. 40189.**—Protest 748968 of Western Wholesale Drug Co. (Los Angeles).

IRON DRUMS.

FISCHER, *General Appraiser:* The drums in question are composed of sheet iron, are cylindrical in form, and were imported as containers of barium peroxide and of permanganate of potash. Duty was levied upon said drums at the rate of 20 per cent ad valorem under the provision in paragraph 127 of the act of 1913 for "cylindrical or tubular tanks or vessels, for holding gas, liquids, or other material," and they are claimed to be properly classifiable as the usual containers of said merchandise and to be dutiable accordingly.

This case is clearly governed by the decision of the United States Court of Customs Appeals in United States *v.* Bene (6 Ct. Cust. Appls., 523; T. D. 36145), wherein substantially similar merchandise was held to have been properly classified under the said provision in paragraph 127. At the hearing

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in this case, which took place at Los Angeles, counsel for the importer endeavored to distinguish the present merchandise from that which was before the court in the Bene case, and to that end sought to prove that the drums in question had no commercial value after importation. In this regard the only fact shown of record is that this importer was unable to profitably dispose of these drums because of excessive freight charges which a sale thereof would involve. The drums are of substantial size and weight and are worth $1.50 and $2.50 apiece, respectively; they have removable heads and the contents thereof can be taken out without in any way breaking or mutilating the drums. They are like the drums in the Bene case, of which the court said:

As the drums is question are strongly built metal vessels, the single completed use of which did not reduce them to rubbish or affect their status as containers, we think they are very clearly distinguishable from those which we considered in United States *v.* Garramone, supra, and United States *v.* Braun Chemical Co., *supra.*

We therefore follow the ruling of the court in the Bene case, supra, and hold the present merchandise dutiable under paragraph 127, as classified by the collector.

The protest is accordingly overruled in all respects and the decision of the collector is affirmed.

**No. 40190.**—Protests 767254, etc., of Adolf Fricke (New York).

TABLE COVERS OF COTTON.—Articles invoiced as "melior" and "filette" which are made-up articles used as covers on porch and reed furniture, the latter classified as Jacquard figured upholstery goods at 35 per cent ad valorem under paragraph 258, tariff act of 1913, and the "melior" as manufactures of jute and cotton, cotton chief value, at 30 per cent under paragraph 266, are claimed dutiable under paragraphs 252 and 253, 263 or 264 or 258 or 266.

Opinion by COOPER, G. A. The covers were found to be ready for use and therefore not dutiable as cotton cloth under paragraph 252, as cotton table damask under paragraph 263, or as any of the articles named in paragraph 264. The merchandise marked "filette," shown to be in chief value of cotton, was held to be properly classified as manufactures of cotton under paragraph 266. Protest also overruled as to the merchandise marked "melior."

**No. 40191.**—Protests 769421, etc., of Kennedy & Moon et al. (New York).

FIGURED COTTON CLOTH.—Cotton fabrics classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913, are claimed dutiable under paragraph 252.

Opinion by COOPER, G. A. On the authority of G. A. 7618 (T. D. 34858), affirmed in United States *v.* Sherman (6 Ct. Cust. Appls., 271; T. D. 35501), the merchandise in question was held dutiable as figured cotton cloth under paragraph 252.

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BEFORE BOARD 3, SEPTEMBER 25, 1916.

**No. 40192.**—Protests 721812, etc., of T. W. Saunders (Buffalo).

TIN DISKS—AMERICAN GOODS RETURNED.

HAY, *General Appraiser:* These are protests against the assessment of duty on certain tin disks under paragraph 199 of the act of August 5, 1909, the protestant claiming free entry under paragraph 500 as American goods returned. Counsel for the Government calls attention to the absence of certain certificates and testimony was offered by the protestant to show that the regulations had been complied with. Copies of some of the certificates, the originals of which it is stated were filed upon entry, were offered at the hearing. The records, together with the testimony and papers introduced at the hearing,

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show that the regulations have been complied with in each of the protests with the exception of 751473, as to which the evidence of exportation from the United States required by the customs regulations does not appear to have been presented at the time of entry.

There is no doubt, therefore, but that the tin plate of which these disks were a part was exported from the United States to Canada. It was used in Canada in making cans for vegetables, fruit, etc. The tin disks are flat pieces of tin that are cut or stamped out of the tops of the cans made from the tin sheets exported from the United States. The hole thereby left constitutes the opening through which the cans are filled and emptied when their contents are used.

Many tons of these disks are returned to the United States, and it is claimed by the protestant that they are the same tin that was exported, and hence free as American goods returned. The testimony shows that they are very largely used to form the tops and bottoms of boxes for snuff, and are chiefly sold to tobacco companies, but to a limited extent are used in the making of children's toys.

It is urged by the Assistant Attorney General, on behalf of the Government, that the disks are not the same merchandise that was exported; that the exportation consisted of tin plate in sheets, and the importation consists of small circular pieces of tin. In other words, that tin plate was exported and scrap tin returned; hence, that paragraph 500 does not apply. To this contention we might give greater consideration were the question a new one, for we think that this position is at least plausible, and that the question is in some measure shrouded in doubt; but under the rule in Jules Matagrin's case, G. A. 7015 (T. D. 30571), that doubt should be resolved in favor of the citizen, as it doubtless was when the question was first before this board. It is true that the only case preceding this one of which the exact merchandise was the subject was decided by this board not upon its merits, but solely upon the question as to whether or not the regulations had been complied with. The board, as expressly stated, assumed, but did not decide that the merchandise in question properly came under the American-goods-returned paragraph. T. W. Saunders's case, G. A. 7586 (T. D. 34650). Long, however, before that case was decided, this board had held in Barton's case, Abstract 5074 (T. D. 26117), that where scrap steel had been exported and used in the manufacture of commodities in Canada, the clippings and cuttings from the same might be brought back to this country under the provision for American goods returned. And again, in Beck's case, G. A. 6212 (T. D. 26865), the board took the same view. Up to this time that view of the law has remained unchallenged, and the customs have been administered upon it. These decisions were before Congress when this paragraph of the law was reenacted in 1913, and it is therefore presumed that Congress, in reenacting that provision in the law of 1913, did it with clear understanding that it would be so administered. This in a sense is a legislative construction, although the case at bar arose under the law of 1909.

Protest 751473 is overruled. Protests 727149 and 721812 are sustained. The collector will reliquidate the entries accordingly.

**No. 40193.**—Protests 801141, etc., of Union Oil Co. of California (Los Angeles).

DRUMS—AMERICAN GOODS RETURNED.—Drums classified as manufactures of metal under paragraph 167, tariff act of 1913, are claimed free of duty as American goods returned under paragraph 404.

Opinion by HAY, G. A. Articles 332 and 333, Customs Regulations of 1915, not having been complied with, the protests were overruled. G. A. 7713 (T. D. 35330) and G. A. 5539 (T. D. 24909) cited.

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BEFORE BOARD 1, SEPTEMBER 27, 1916.

**No. 40194.**—Protest 802206 of Carl Fischer (New York).

CATGUT.—Catgut classified as strings for musical instruments at 20 per cent ad valorem under paragraph 366, tariff act of 1913, is claimed entitled to free entry as catgut, unmanufactured, under paragraph 443.

Opinion by MCCLELLAND, G. A. From the evidence it was found that the catgut in question is imported in coils of various lengths to be used in the manufacture of tennis rackets, artificial limbs, and drums, and that before it could be used as strings for musical instruments it would have to be stretched, gauged, smoothed, and covered with silk and wire. On the authority of United States *v.* American Express Co. (6 Ct. Cust. Appls., 36; T. D. 35275) it was held free of duty as catgut, unmanufactured, under paragraph 443.

**No. 40195.**—Protest 797977 of J. T. Steeb & Co. (Seattle).

BAMBOO LAMP SHADES.—Merchandise classified as shades at 25 per cent ad valorem under paragraph 175, tariff act of 1913, is claimed dutiable as manufactures of wood at 15 per cent under paragraph 176.

Opinion by MCCLELLAND, G. A. The lamp shades in question were found to be in chief value of bamboo. They were held dutiable under paragraph 176 as claimed. G. A. 7804 (T. D. 35848) followed.

**No. 40196.**—Protests 780725-56892, etc., of Sears, Roebuck & Co. (Chicago).

BASKETS.—Baskets made of willow and straw, classified at 25 per cent ad valorem under paragraph 175, tariff act of 1913, are claimed dutiable as manufactures of wood at 15 per cent under paragraph 176.

Opinion by MCCLELLAND, G. A. The baskets in question were found to be composed in chief value of willow and were held properly classified under paragraph 175.

**No. 40197.**—Protests 798396, etc., of Geo. Borgfeldt & Co. (New York).

STEMWARE—NECKLACES.—So-called stemware drinking glasses composed of a blown glass bowl with a molded stem and foot, classified as a manufacture of blown glass at 45 per cent ad valorem under paragraph 84, tariff act of 1913, are claimed dutiable as manufactures of glass at 30 per cent under paragraph 95. Necklaces or neck chains composed in chief value of beads, classified as jewelry at 60 per cent ad valorem under paragraph 356, are claimed dutiable as beaded articles at 50 per cent under paragraph 333.

Opinion by SULLIVAN, G. A. On the authority of United States *v.* Fondeville (7 Ct. Cust. Appls., —; T. D. 36457), the stemware in question was held dutiable under paragraph 95, as claimed. Protests overruled as to necklaces.

**No. 40198.**—Protest 802991 of J. T. Steeb & Co. (Seattle).

FANCY PAPER BOXES—TOYS.—Boxes of fancy shapes classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as manufactures of paper at 25 per cent under paragraph 332.

Opinion by SULLIVAN, G. A. Protest unsupported; overruled.

**No. 40199.**—Protest 802923 of Scheuer & Co. (New York).

STRAW BASKETS—TOYS.—Small baskets composed of white and colored straw fancifully and ornamentally interwoven, having two handles, classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as straw baskets at 25 per cent under paragraph 175. Various other claims are made.

Opinion by SULLIVAN, G. A. The baskets were found to be composed in chief value of straw, used as containers for handkerchiefs or tea or coffee, clearly not toys within the definition laid down by the court in Illfelder *v.* United States

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(1 Ct. Cust. Appls., 109; T. D. 31115). They were held dutiable under paragraph 175. G. A. 7790 (T. D. 35796) followed.

**No. 40200.**—Protests 791694, etc., of Adolph Strauss & Co. (New York).

PAPER CAPS—MIRRORS—TOYS.—Paper caps or hats and small mirrors, classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as manufactures of paper at 25 per cent under paragraph 332 or as manufactures of tissue or crêpe paper at 30 per cent under paragraph 323, and as mirrors at 30 per cent under paragraph 95.

Opinion by SULLIVAN, G. A. The hats or caps in question were held dutiable as manufactures of paper under paragraph 332. No evidence having been offered regarding the mirrors, the protests were overruled as to them.

**No. 40201.**—Protest 789650-57691 of Sears, Roebuck & Co. (Chicago).

TRIPOD MAGNIFIERS—MICROSCOPES.—So-called tripod magnifiers classified as optical instruments at 35 per cent ad valorem under paragraph 93, tariff act of 1913, are claimed dutiable as microscopes at 25 per cent under paragraph 94.

Opinion by SULLIVAN, G. A. On the authority of Abstract 39936 the articles in question were held dutiable as microscopes under paragraph 94.

**No. 40202.**—Protests 783467, etc., of Benziger Bros. et al. (New York).

ROSARIES—CRUCIFIXES.—Rosaries and crucifixes classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of metal under paragraph 167.

Opinion by SULLIVAN, G. A. Upon stipulation of counsel the rosaries and crucifixes composed in chief value of metal were held dutiable under the provisions of paragraph 167, as claimed.

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BEFORE BOARD 2, SEPTEMBER 27, 1916.

**No. 40203.**—Protests 772889, etc., of Edgar T. Ward's Sons (Boston).

STEEL STRIPS.—Steel strips measuring more than 5 inches in width, classified at 15 per cent ad valorem under paragraph 110, tariff act of 1913, are claimed dutiable at 12 per cent under paragraph 105.

Opinion by FISCHER, G. A. On the authority of G. A 7861 (T. D. 36176) the merchandise in question was held dutiable as strips of iron or steel not specially provided for under paragraph 105. Protests sustained in part.

**No. 40204.**—Protest 784981 of Morimura Bros. (New York).

LANTERNS OF PAPER AND WOOD.—Lanterns composed of tissue paper, wood, and other materials, classified as manufactures of tissue paper at 30 per cent ad valorem under paragraph 323, tariff act of 1913, are claimed dutiable as manufactures of wood at 15 per cent under paragraph 176.

Opinion by FISCHER, G. A. The items found to be composed in chief value of wood were held dutiable under paragraph 176, as claimed.

**No. 40205.**—Protest 765849 of Ideal Paper Box Co. (Cleveland).

POST CARDS—PHOTOGRAPHS.—Picture cards classified at 25 per cent ad valorem under paragraph 332, tariff act of 1913, as post cards, plain, decorated, embossed, or printed, are claimed dutiable at 15 per cent under paragraph 329 as photographs.

Opinion by FISCHER, G. A. It was found that the cards in question are not properly classifiable as post cards under paragraph 332, but there being no proof in the record that they are photographs the protest was overruled.

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**No. 40206.**—Protest 797376 of Jules Racine & Co. (New York).

TIMERS.—Timers classified as watches at 30 per cent ad valorem under paragraph 161, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by FISCHER, G. A. On authority of G. A. 7827 (T. D. 35791) the timers were held dutiable under paragraph 167, as claimed.

**No. 40207.**—Protest 797673 of Stone & Downer Co. (Boston).

SALTS OF ANTIMONY.—Salts of antimony classified at 25 per cent ad valorem under paragraph 144, tariff act of 1913, are claimed dutiable as chemical and medicinal salts at 15 per cent under paragraph 5.

Opinion by FISCHER, G. A. On the authority of United States *v.* Innis (7 Ct. Cust. Appls., —; T. D. 36254), affirming Abstract 38660, the salts of antimony in question were held dutiable under paragraph 5.

**No. 40208.**—Protests 787582, etc., of Hensel, Bruckmann & Lorbacher et al. (New York).

X-RAY PAPER—SURFACE-COATED PAPER.—X-Ray or Roentgen Ray paper coated with a preparation made by dissolving the salts of the metals barium and platinum in water and adding thereto an adhesive substance, classified as paper with coated surfaces at 35 per cent ad valorem under paragraph 324, tariff act of 1913, is claimed dutiable at 25 per cent under the provision in the same paragraph for "albumenized or sensitized paper or paper otherwise surface coated for photographic purposes."

Opinion by FISCHER, G. A. On the authority of G. A. 7908 (T. D. 36419), relating to identical merchandise, the paper in question was held dutiable at 25 per cent under paragraph 324.

**No. 40209.**—Protest 789783 of Happel & McAvoy (New York).

SCIENTIFIC TEXTBOOKS.—The importation in question consists of 100 copies of a book entitled "Clinical Disorders of the Heart Beat." They were classified under the provision for "books of all kinds" at 15 per cent ad valorem in paragraph 329, tariff act of 1913, and are claimed entitled to free entry as textbooks under paragraph 426.

Opinion by FISCHER, G. A. The book in question, which is a handbook for practitioners and students, was held entitled to free entry under paragraph 426. G. A. 7950 (T. D. 36611) followed.

**No. 40210.**—Protests 781259, etc., of Snow's United States Express et al. (New York).

COTTON NETTINGS.

HOWELL, *General Appraiser:* The merchandise consists of cotton nettings. It was assessed for duty at the rate of 60 per cent ad valorem under the *eo nomine* provision for *nettings* in paragraph 358, tariff act of 1913. It is claimed to be properly dutiable as cotton cloth under the last clause of paragraph 252, which reads as follows:

252. * * * Plain gauze or leno woven cotton nets or nettings shall be classified for duty as cotton cloth.

No testimony has been offered to show that the words "plain gauze or leno woven cotton nets or nettings" have any meaning in trade and commerce different from the common meaning of the words. The case therefore rests upon the common and usual meaning of the words "plain gauze or leno woven."

In Carter's case, G. A. 7782 (T. D. 35748), where a similar claim was advanced as to cotton nettings made on the Nottingham lace-curtain machine, we reviewed many of the authorities on gauze and leno weaving, and said:

From a study of the foregoing authorities and others which we have examined, we conclude that a plain gauze or leno woven cotton netting is a fabric

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woven on a broad loom with warp threads running lengthwise of the fabric and weft threads running at right angles thereto, some of the warp threads crossing over other warp threads and being held by the weft threads, thus producing open meshes. Such a fabric could not be made on the Nottingham lace-curtain machine, inasmuch as that machine uses no weft threads, the meshes in the fabric produced on that machine being formed through the use of bobbin threads, which run in the same direction as the warp threads and are twisted around them.

In the case at bar the testimony shows that the goods were made on a netting machine which uses no weft threads, the meshes in the fabric being formed, as in the case of goods made on the Nottingham lace-curtain machine, through the use of bobbin threads. Goods so produced are not included by the lexicographers and authorities on textile fabrics within the definitions of gauze or leno woven fabrics. We find nothing in this record to lead us to change the view which we expressed in Carter's case, supra, that the provision for "plain gauze or leno woven cotton nets or nettings" was intended to provide for cheap mosquito nets and nettings, which are generally known as "mosquito bars" and which are made on broad-loom machines with warp threads running lengthwise of the fabric and weft threads running at right angles thereto, some of the warp threads crossing over other warp threads and being held by the weft threads. Such nets and nettings respond in all essential particulars to the definitions of gauze or leno woven fabrics as given by the lexicographers and authorities on textile fabrics, whereas the nettings here in question, which are used for dress purposes, are of an entirely different character.

Following our decision in the Carter case, supra, the protests are overruled and the decision of the collector in each case is affirmed.

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BEFORE BOARD 3, SEPTEMBER 27, 1916.

**No. 40211.**—Protest 797500 of Gilman Collamore & Co. (New York).

CHINA AND METAL VASES.—Tobacco pots and bronze stands for the same, classified as smokers' articles under paragraph 381, tariff act of 1913, are claimed dutiable as manufactures of metal under paragraph 167.

Opinion by HAY, G. A. The articles were held dutiable according to the component material of chief value, which was found to be metal in one of the items and decorated china in the other. Protest sustained in part.

**No. 40212.**—Protest 309829 of Courtin & Goldin Co. (New York).

SHOOKS—AMERICAN GOODS RETURNED.—Shooks, barrels, and crates, imported into this country filled with oranges or grapefruit, are claimed entitled to free entry as American goods returned.

Opinion by HAY, G. A. Protest without merit; overruled.

**No. 40213.**—Protests 784235, etc., of M. J. Brandenstein & Co. et al. (San Francisco and Seattle).

TEA COVERINGS.—It is claimed here that certain tea coverings are entitled to free entry under paragraph 627, tariff act of 1913.

Opinion by HAY, G. A. Wright *v.* United States (6 Ct. Cust. Appls., 528; T. D. 36147) followed as to tea coverings.

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BEFORE BOARD 1, SEPTEMBER 29, 1916.

**No. 40214.**—Protest 802494 of Butler Bros. (St. Paul).

PROTEST TOO LATE.—This protest was filed more than 30 days after the date of liquidation.

Opinion by MCCLELLAND, G. A. Protest not filed in time; dismissed.

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**No. 40215.**—Protest 771075 of Strahl & Pitsch (New York).

MONTAN WAX.—Montan wax classified as an acid at 15 per cent ad valorem under paragraph 1 is claimed free of duty under the provision for "wax, vegetable or mineral," in paragraph 641.

Opinion by BROWN, G. A. On the authority of Abstract 39632 Montan wax was held entitled to free entry under paragraph 641.

**No. 40216.**—Protest 799654 of Wm. Anderson & Co. (New York).

FLANNELS.—Merchandise classified as wool dress goods at 35 per cent ad valorem under paragraph 290, tariff act of 1913, is claimed dutiable as flannels under paragraph 289.

Opinion by BROWN, G. A. These flannels, being similar to those passed upon in Abstract 39393, were held dutiable under paragraph 289, as claimed.

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BEFORE BOARD 2, SEPTEMBER 29, 1916.

**No. 40217.**—Protests 765704, etc., of H. Herrman, Sternbach & Co. (New York).

FIGURED COTTON CLOTH.—It is claimed here that fabrics classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913, are dutiable under paragraph 252.

Opinion by COOPER, G. A. On the authority of G. A. 7618 (T. D. 34858), affirmed in United States *v.* Sherman (6 Ct. Cust. Appls., 271; T. D. 35501), the merchandise in question was held dutiable as woven figured cotton cloth under paragraph 252.

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REHEARINGS GRANTED.

SEPTEMBER 13, 1916.

**No. 40218.**—TEA COVERINGS.—Protests 793238, etc., of W. H. Allison Co. Decided July 14, 1916. Not published.

**No. 40219.**—SHIP'S EQUIPMENT.—Protest 797634 of Balfour, Guthrie & Co. Decided July 14, 1916. Not published.

SEPTEMBER 18, 1916.

**No. 40220.**—ROOFING FELT.—Protests 802776, etc., of P. McGettrick. G. A. 7954 (T. D. 36615).

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## (T. D. 36704.)

### *Drawback on polished fancy rice, polished screenings, etc.*

Drawback allowed on polished fancy rice, polished screenings, polished brewers' rice, and rice flour or meal produced by the Empire Rice Milling Co. (Ltd.), of New Orleans, La., for the account of A. Held, of New Orleans.

TREASURY DEPARTMENT, *October 2, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on polished fancy rice, polished screenings, polished brewers' rice, and rice flour or meal manufactured by the Empire Rice Milling Co. (Ltd.), of New Orleans, La., for the benefit of A. Held, also of New Orleans, with the use of imported cleaned rice.

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A manufacturing record shall be kept in accordance with the sworn statements of D. R. Bertaut, manager for A. Held, dated August 2, 1916, and of the Empire Rice Milling Co., dated September 19, 1916, which will show, in addition to the usual import data, in the case of each lot of rice manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity, value, and identity of the imported cleaned rice used, and the quantities of glucose and talc, the quantities of polished fancy rice, polished screenings, polished brewers' rice, and rice flour or meal obtained, the value of each, and the quantity of waste incurred. A sworn abstract from the manufacturing record shall be filed with the drawback entry.

The duty paid on the imported cleaned rice used shall be distributed between the principal products—polished fancy rice, polished screenings, and polished brewers' rice—and the by-product—rice meal or flour—according to their relative values, subject to the maximum for by-products prescribed by the drawback law as interpreted by T. D. 33809 of October 25, 1913.

Drawback may be allowed under these regulations on polished fancy rice, polished screenings, polished brewers' rice, and rice flour or meal exported on and after May 1, 1916.

Respectfully, ANDREW J. PETERS,
(103980) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New Orleans, La.*

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(T. D. 36705.)

*Drawback.*

Amending article 866 of the Customs Regulations of 1915 as to the completion of drawback claim.

TREASURY DEPARTMENT, *October 2, 1916.*

*To collectors of customs and others concerned:*

The first paragraph of article 866 of the Customs Regulations of 1915 is hereby amended to read as follows:

"Within three years after clearance of the exporting vessel or conveyance, there shall be filed with the collector of customs at the port where the notice of intent was deposited, a drawback entry in duplicate, in the form hereinafter prescribed, together with all documents required by the drawback regulations for the liquidation and payment of the claim. Several shipments covered by notices of intent may be included in one drawback entry, and where two or more shipments are included in a single entry, each shipment shall constitute a claim within the meaning of this article. Claims for draw-

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back not completed within three years from the date of clearance of the exporting vessel or conveyance shall be treated as abandoned and no extension of time will be granted for any cause."

All of article 866 following the form of certificate of manufacture is hereby revoked.

(85326.) ANDREW J. PETERS, *Assistant Secretary.*

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(T. D. 36706.)

*Food and drugs act—Spirits from the United Kingdom.*

Spirits not to be admitted from the United Kingdom of Great Britain and Ireland of a kind which is forbidden entry or forbidden to be sold or restricted in sale in that country.

TREASURY DEPARTMENT, *October 2, 1916.*

*To collectors of customs and others concerned:*

In accordance with a request of the Secretary of Agriculture, the appended copy of a press notice to importers of spirits from the United Kingdom of Great Britain and Ireland and of the certificate referred to therein are published for the information and guidance of collectors of customs and others concerned.

(95500.) ANDREW J. PETERS, *Assistant Secretary.*

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NOTICE TO IMPORTERS OF SPIRITS FROM THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND.

*Washington, D. C.*

The United States Department of Agriculture to-day issued a notice calling to the attention of importers the "immature spirits (restriction) act, 1915, of the United Kingdom of Great Britain and Ireland, which enacts that 'no British or foreign spirits shall be delivered for home consumption unless they have been warehoused for a period of at least three years.'"

Exception is made in the case of spirits delivered to a manufacturing chemist or manufacturer of perfume for use in their manufactures, to spirits delivered for scientific purposes, and to imported Geneva and perfumed spirits and foreign liqueurs.

The food and drugs act, June 30, 1906, provides that any article of food or drug offered to be imported into the United States if "of a kind forbidden entry into, or forbidden to be sold or restricted in sale in, the country in which it is made or from which it is exported shall be refused admission."

The Department of State has advised that the commissioners of customs and excise have authorized local collectors in the United Kingdom to supply on demand to shippers a certificate to accompany shipments of spirits from the United Kingdom of Great Britain and Ireland to the United States to the effect that the goods meet the requirements imposed by the immature spirits (restriction) act, 1915, on goods intended for home consumption.

Accordingly, shipments of spirits from the United Kingdom, if offered for entry into this country on and after December 1, 1916, will be refused admission if not accompanied by a certificate of the nature indicated above.

The certificate should be attached to the copy of the invoice to which is attached consular Form 198, "Declaration of shipper of food and drug prod-

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ucts," noting on all other copies of the invoice that the certificate has been so attached. American importers wishing additional details as to the form of certificate issued by British excise officers should write to the Bureau of Chemistry, United States Department of Agriculture, Washington.

*Spirits exported to the United States of America—Immature spirits (restriction) act, 1915.*

*To the officer of customs and excise:*

The spirits contained in the undermentioned packages, which were delivered for exportation to the United States of America on the —— day of ——, 191–, are not of a kind which is forbidden entry into or forbidden to be sold or restricted in sale in the United Kingdom of Great Britain and Ireland (*a*) for consumption, (*b*) for the purpose of making medicines.

(*c*) — request a certificate that this statement is true.

Signature.....

Date.....

*Particulars of spirits exported.*

| Kind of spirits. | Marks and numbers of packages. | Number of casks or cases. | Proof quantity. |
|---|---|---|---|
| | | | |
| ..... | ..... | ..... | ..... |
| ..... | ..... | ..... | ..... |
| ..... | ..... | ..... | ..... |

(*a*) (*b*) Cancel inappropriate section.

(*c*) "I" or "we."

(*d*) As evidence of the validity of this certificate, the customs and excise official stamp must be impressed on the document immediately below the particulars given above.

(*d*) I certify that the official records show that the above statement is correct.

..... Officer of customs excise.

....., Station.

....., Port of collection.

Date....., 191..

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## (T. D. 36707.)

### *Hand sewing machines—Toys.*

Small sewing machines will continue to be assessed with duty at the rate of 35 per cent ad valorem as toys under paragraph 342, tariff act of 1913.

TREASURY DEPARTMENT, *October 2, 1916.*

SIR: I have to call your attention to the decision of the Board of United States General Appraisers of July 31, 1916, Abstract 40043, wherein certain hand sewing machines which had been assessed with duty at the rate of 35 per cent ad valorem as toys under paragraph 342 of the tariff act of 1913 were held by the board to be free of duty as sewing machines under paragraph 441 of the said act.

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No appeal will be taken from the said decision, but the department is advised by the Assistant Attorney General that another case is now pending before the board in which additional testimony on the question at issue was presented.

Pending a judicial determination of the question, therefore, you will continue to assess duty on small sewing machines at the rate of 35 per cent ad valorem as toys under paragraph 342 of the tariff act of 1913.

Respectfully, ANDREW J. PETERS,
(104591.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36708.)

*Drawback on motorcycle parts.*

T. D. 36337 of April 21, 1916, extended to cover motorcycle motors, frames, and handlebars manufactured by the Hendee Manufacturing Co., of Springfield, Mass., with the use of imported carburetors or carburetor parts.

TREASURY DEPARTMENT, *October 4, 1916.*

SIR: The department's regulations of April 21, 1916 (T. D. 36337), providing for drawback on motorcycles manufactured by the Hendee Manufacturing Co., of Springfield, Mass., with the use of imported carburetors are hereby extended to cover motorcycle motors, frames, and handlebars manufactured by the said company with the use of imported carburetors or carburetor parts.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated September 18, 1916, transmitted herewith, showing, in the case of each motor, frame, or set of handlebars manufactured for exportation with benefit of drawback, the number and identity of the imported carburetors or parts of each kind appearing therein. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the number of imported articles appearing in the exported motorcycle motors, frames, or handlebars, as shown by the abstract from the manufacturing record.

Drawback may be allowed under these regulations on articles exported on or after June 27, 1916.

Respectfully, ANDREW J. PETERS,
(102390-3.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*



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(T. D. 36709.)

*Drawback on rum and alcohol.*

T. D. 36682 of September 25, 1916, extended to cover rum and alcohol manufactured by Chapin, Trull & Co., of Boston, Mass., with the use of imported molasses.

TREASURY DEPARTMENT, *October 4, 1916.*

SIR: The department's regulations of September 25, 1916 (T. D. 36682), providing for the payment of drawback on rum and alcohol manufactured by the Everett Distilling Co., of Everett, Mass., with the use of imported molasses and other saccharine materials or with the use of such imported materials in combination with similar domestic materials, are hereby extended to cover rum and alcohol manufactured by Chapin, Trull & Co., of Boston, Mass., with the use of imported molasses and other saccharine materials or with the use of such imported materials in combination with similar domestic materials.

The sworn statements of Chapin, Trull & Co., dated May 26 and August 18, 1916, are transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(7998g.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

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(T. D. 36710.)

*Drawback on rum and alcohol.*

T. D. 36682 of September 25, 1916, extended to cover rum and alcohol manufactured by Daniel E. Chase & Co., of Somerville, Mass., with the use of imported molasses.

TREASURY DEPARTMENT, *October 4, 1916.*

SIR: The department's regulations of September 25, 1916 (T. D. 36682), providing for the payment of drawback on rum and alcohol manufactured by the Everett Distilling Co., of Everett, Mass., with the use of imported molasses and other saccharine materials or with the use of such imported materials in combination with similar domestic materials, are hereby extended to cover rum and alcohol manufactured by Daniel E. Chase & Co., of Somerville, Mass., with the use of imported molasses and other similar saccharine materials, or with the use of such imported materials in combination with similar domestic materials.

Copies of the report of the special agent and sworn statements of Daniel E. Chase & Co., dated May 19 and August 18, 1916, are transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(7998g.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

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(T. D. 36711.)

*Drawback on toilet preparations.*

Drawback on toilet preparations manufactured by the La Valliere Co., of New Orleans, La., with the use of domestic tax-paid alcohol and imported talcum.

TREASURY DEPARTMENT, *October 5, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on perfumes and toilet waters manufactured by the La Valliere Co., of New Orleans, La., with the use of domestic tax-paid alcohol and on perfumed talcum powders manufactured by said company with the use of imported talcum.

The allowance shall not exceed the quantity of domestic tax-paid alcohol or imported talcum appearing in the exported products, as shown by the sworn statement of the manufacturers, dated September 22, 1916, which is transmitted herewith.

Supplemental sworn schedules covering additional kinds of toilet preparations or showing changes in formulas may be filed, and upon verification of the same drawback may be allowed on toilet preparations manufactured in accordance therewith.

Respectfully, ANDREW J. PETERS,
(103366-1.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New Orleans, La.*

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(T. D. 36712.)

*Drawback on chewing gum.*

Drawback on candy-coated chewing gum designated as "Chiclets," manufactured by the American Chicle Co., of Rochester, N. Y., with the use of imported refined chicle and refined sugar produced in whole or in part from imported raw sugar.

TREASURY DEPARTMENT, *October 5, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations for 1915) on candy-coated chewing gum designated as "Chiclets," manufactured by the American Chicle Co., of Rochester, N. Y., with the use of imported refined chicle and refined sugar produced in whole or in part from imported raw sugar.

The quantities of imported refined chicle and refined sugar which may be taken as a basis for the allowance of drawback shall not exceed the quantities appearing in the exported "Chiclets," as shown by the sworn statement of the manufacturers, dated July 21, 1916, which is transmitted herewith.

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Supplemental sworn schedules showing changes in the quantities of refined chicle and sugar used may be filed, and upon the verification of the same drawback may be allowed on "Chiclets" manufactured in accordance therewith.

Respectfully, ANDREW J. PETERS,
(69717.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36713.)

*Bonds of deputy collectors.*

The Government is precluded by the act of August 5, 1909 (36 Stat. L., 125), from authorizing the reimbursement to customs officers of amounts expended by them on account of bonds given by reason of their official positions.

TREASURY DEPARTMENT, *October 5, 1916.*

SIR: The department is in receipt of your letter of the 9th ultimo, submitting the following question for determination:

Should the Government pay for bonds given by deputy collectors in charge at outside ports of entry?

The urgent deficiency appropriation act approved August 5, 1909 (36 Stat. L., 125), which was the subject of department circular No. 36 of the year 1909, contains the following proviso:

That hereafter the United States shall not pay any part of the premium, or other cost, of furnishing a bond required by law or otherwise of any officer or employee of the United States.

In view of this specific provision of law, the department is precluded from authorizing any refund of amounts given by deputy collectors or other officers on account of bonds given by them by reason of their official position.

Respectfully, ANDREW J. PETERS,
(100064-3.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Boston, Mass.*

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(T. D. 36714.)

*Dyestuffs—Warehouse goods.*

Dyestuffs such as covered by Title V of the revenue act of September 8, 1916, withdrawn from a public or private bonded warehouse for consumption on or after September 9, 1916, are subject to duty at the rates provided under the said act of September 8, 1916 (T. D. 36667), even though imported and entered in such warehouse prior to September 9, 1916.

TREASURY DEPARTMENT, *October 5, 1916.*

SIR: The question has been presented to the department whether dyestuffs imported and entered for warehouse under the tariff act

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of October 3, 1913, but not withdrawn from warehouse until after the taking effect of the revenue act of September 8, 1916, are dutiable under Title V of the later act, when like dyestuffs are covered by the provisions of the later act. The enacting clause of the provisions in question of the later act provides—

> That on and after the day following the passage of this act, except as otherwise specially provided for in this title, there shall be levied, collected, and paid upon the articles named in this section when imported from any foreign country into the United States * * * the rates of duty which are prescribed in this title * * *.

It is contended that it was the intention of Congress to make the provisions of this title applicable only to importations arriving after the taking effect of the new act.

Section 20 of the customs administrative act of June 10, 1890, was in part as follows:

> Any merchandise deposited in any public or private bonded warehouse may be withdrawn for consumption within three years from the date of original importation on payment of the duties and charges to which it may be subject by law at the time of such withdrawal. * * *

As amended by the act of October 1, 1890, the language is as follows:

> That any merchandise deposited in bond in any public or private bonded warehouse may be withdrawn for consumption within three years from the date of original importation on payment of the duties and charges to which it may be subject by law at the time of such withdrawal. * * *

The quoted portion of the original section is the same as in paragraph S of section 3 of the tariff act of October 3, 1913.

By the act of December 15, 1902, section 20 of the act of June 10, 1890, was amended to read substantially as first quoted above, but with the following proviso, although this proviso is now omitted from the tariff act of 1913, as it was omitted from the tariff act of 1909:

> *Provided*, That the same rate of duty shall be collected thereon as may be imposed by law upon like articles of merchandise imported at the time of withdrawal. * * *

In T. D. 25276 the Circuit Court of Appeals held that the amendment of December 15, 1902, was declaratory of the meaning of the earlier act, it appearing that the amending act was enacted by Congress in consequence of the apprehended results of a decision from which an appeal had been taken.

The omission from the corresponding paragraph now is probably because the proviso is not necessary in view of T. D. 25276.

Although the enacting clause of the dyestuff provision of the act of September 8, 1916, mentions only "articles named in this section when imported from any foreign country," paragraph S would ap-

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pear to apply, in view of the above decision, and make the products withdrawn from warehouse, after the act became effective, dutiable "at the same rate of duty * * * as may be imposed by law upon like articles of merchandise imported at the time of withdrawal." Note also T. D. 27412.

You will, therefore, assess duty on merchandise of the character in question withdrawn from a public or private bonded warehouse for consumption on and after September 9, 1916, at the rates provided in the provisions in question of the act of September 8, 1916 (T. D. 36667), even though imported and entered in such warehouse prior to September 9, 1916.

Respectfully, ANDREW J. PETERS,
(104297.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36715.)

*Drawback on refined glycerin.*

Drawback on refined glycerin manufactured by the Cudahy Packing Co., of Omaha, Nebr., wholly from imported partially refined or low-gravity glycerin.

TREASURY DEPARTMENT, *October 6, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on refined glycerin manufactured by the Cudahy Packing Co., of Omaha, Nebr., wholly from imported partially refined or low-gravity glycerin.

A manufacturing record shall be kept, showing, in the case of each run of partially refined or low-gravity glycerin, the period of manufacture, the quantity, quality, and identity of each lot of imported material used during such period, the total quantities of glycerin for nitro and C. P. pharmaceutical glycerin obtained, the value of each, and the quantity of waste resulting. A sworn abstract from such manufacturing record shall be filed in your office and the exported product shall be identified with the period of manufacture in which produced.

The basis of liquidation shall be 99 per cent of the duties paid on the imported partially refined or low-gravity glycerin used and the quantities of glycerin for nitro and C. P. pharmaceutical glycerin produced therefrom, as shown by the abstract from the manufacturing record, the drawback accruing to be distributed between the two classes of refined glycerin produced according to their relative values.

The sworn statement of the manufacturers, dated September 26, 1916, is transmitted herewith.

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Drawback may be allowed under these regulations on the products covered thereby exported on and after May 16, 1916.

Respectfully, ANDREW J. PETERS,
(101358-1.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Omaha, Nebr.*

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(T. D. 36716.)

*Malt extract in drums.*

Appeal from decision of the Board of United States General Appraisers of August 8, 1916, Abstract 40070, involving the classification of certain malt extract in drums.

TREASURY DEPARTMENT, *October 9, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 30th ultimo, relative to the decision of the Board of United States General Appraisers of August 8, 1916, Abstract 40070, wherein certain malt extract in drums, which had been assessed with duty at the rate of 45 per cent ad valorem as malt extract, condensed, under paragraph 246 of the tariff act of October 3, 1913, was held to be dutiable at the rate of 23 cents per gallon under the said paragraph, the rate provided therein for fluid malt extract in casks.

Your action in filing, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909, is hereby approved.

Respectfully, ANDREW J. PETERS,
(72437.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

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(T. D. 36717.)

*Drawback on antiseptic toothpicks, etc.*

Drawback on antiseptic toothpicks, and on paper containers for antiseptic toothpicks and paper containers for "sippers," manufactured by the Hygeia Antiseptic Toothpick Co., of New York, N. Y., with the use of imported materials.—T. D. 27298 of August 19, 1906, and T. D. 29400 of December 10, 1908, revoked.

TREASURY DEPARTMENT, *October 7, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on antiseptic toothpicks manufactured by the Hygeia Antiseptic Toothpick Co., of New York, N. Y., with the use of imported quill toothpicks and on

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containers for such antiseptic toothpicks and containers for "sippers," manufactured by the said company with the use of imported cigarette paper.

A manufacturing record shall be kept, showing, in the case of each lot of paper containers manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity, value, and identity of the imported paper used, the number of paper containers of each size produced, the quantity of waste resulting, and the value of such waste, if any. A like record shall be kept covering each lot of antiseptic toothpicks manufactured for exportation with benefit of drawback. Sworn abstracts from the above record shall be filed with the drawback entry.

The allowance may equal the quantity of imported materials used in the manufacture of the exported articles, less the quantity of imported material which the value of the waste will replace.

The sworn statement of the manufacturers, dated August 22, 1916, is transmitted herewith for filing in your office.

T. D. 27298 of April 19, 1906, and T. D. 29400 of December 10, 1908, are hereby revoked.

Respectfully, ANDREW J. PETERS,
(60335) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36718.)

*Mail importations—Precious stones.*

TREASURY DEPARTMENT, *October 9, 1916.*

*To collectors and other officers of the customs:*

Notice is hereby given that from and after this date packages, sealed and unsealed, registered and unregistered, containing precious stones, cut or uncut, may be imported in the regular mails from foreign countries, subject to all customs duties and customs regulations, in the same manner as though imported by parcel post, freight, or express.

The packages must be plainly marked abroad with the words "dutiable" and "subject to examination by United States customs officers," and they may also be marked "precious stones." Each package must contain an invoice giving an accurate statement of the value of the contents thereof.

Packages which do not conform to these requirements will be treated in the manner prescribed in Chapter VI of the Customs Regulations of 1915.

(60935.) ANDREW J. PETERS, *Assistant Secretary.*

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(T. D. 36719—G. A. 7970.)

*Crushed stone.*

CRUSHED STONE DUTIABLE UNDER PARAGRAPH 81, TARIFF ACT OF 1913.

Stone crushed in a machine especially designed for that purpose, separated by screening into various sizes, crushed and screened to render it especially adapted to concrete work and road making, is a mineral substance wholly or partially manufactured and dutiable as such under paragraph 81, act of 1913.

## United States General Appraisers, New York, October 4, 1916.

In the matter of protests 764116, etc., of Great Lakes Dredge & Dock Co. *et al.* against the assessment of duty by the collectors of customs at the ports of Detroit and Cleveland.

[Affirmed.]

*Curie, Smith & Maxwell* (*Andrew McC. Barnes* of counsel) for the importers.

*Bert Hanson*, Assistant Attorney General (*John R. Rafter*, special attorney), for the United States.

Before Board 3 (WAITE and HAY, General Appraisers; WAITE, G. A., concurring).

HAY, *General Appraiser:* These protests are against the assessment of duty by the collector under paragraph 81 on certain crushed stone, the protestants claiming that the commodity should be admitted free of duty under the provisions of paragraph 549. Paragraph 81 and paragraph 549 read as follows:

81. Earthy or mineral substances, wholly or partially manufactured, and articles and wares composed wholly or in chief value of earthy or mineral substances, not specially provided for in this section, whether susceptible of decoration or not, if not decorated in any manner, 20 per centum ad valorem; if decorated, 25 per centum ad valorem; unmanufactured carbon, not specially provided for in this section, 15 per centum ad valorem; electrodes for electric furnaces, electrolytic and battery purposes, brushes, plates, and disks, all the foregoing composed wholly or in chief value of carbon, 25 per cent ad valorem; manufactures of carbon not specially provided for in this section, 20 per centum ad valorem.

549. Minerals, crude, or not advanced in value or condition by refining or grinding, or by other process of manufacture, not specially provided for in this section.

The question presented by these appeals is one that has been many times before this board. Two years ago, in August, 1914, in MacArthur Bros. Co.'s case, Abstract 36304 (T. D. 34727), the commodity before us in that case being practically identical with that before us now, we said:

Those familiar with the history of this question before this tribunal will understand it is no longer an open question. For many years after the introduction of the machinery known as the stone crusher the classification of this commodity was a question upon which the board differed. It was, however, first definitely settled in United States *v.* Graser-Rothe (164 Fed., 205; T. D. 29240).

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The case at bar, however, is presented with an increased volume of testimony and greater elaboration of argument than any of those preceding it, and it may be well here to go a little further into detail of the history of the litigation before this board. Prior to 1906 the great change that had taken place not only in the use of the commodity here under consideration but in the method of its production had not been taken note of by the board. The earlier decisions of the board had held that it was a crude mineral substance. The fact that machinery was devised expressly for the purpose of manufacturing it, that the process of manufacture was not entirely a simple one, that the commodity was manufactured for a specific use, and that that use was very extensive, was not noted, nor was the fact apparently noted that this process of manufacture increased the commodity in value.

Certain members of the board had reached the conclusion that under the changed conditions that road building and building construction had undergone, rendering the uses of crushed stone and crushed marble far more general and far more extensive, and the fact that there had been devised machinery expressly for the purpose of manufacturing it, which ground the stone or marble into small pieces and then ran it through a screen separating it into various sizes—all being done by machinery for an express and definite purpose—the commodity had, as a result, passed from out the sphere of crude material and had become a manufactured article within well-settled legal definitions. A case was decided in which that view was expressed, but followed the previous decisions that the material in question was a crude mineral. Graser-Rothe's case, G. A. 6631 (T. D. 28289). This case was appealed to the United States Circuit Court for the Southern District of Ohio. The judge of that court adopted the view above expressed, reversing the case and holding that the commodity in question was a manufactured article reduced to its present state by a process of manufacture specially designed for the purpose. United States *v.* Graser-Rothe (164 Fed., 205; T. D. 29240).

The board thereafter, following the decision of the Circuit Court for the Southern District of Ohio, *supra*, in C. D. Jackson & Co.'s case, G. A. 6879 (T. D. 29613), and in Traitel Bros. & Co.'s case, Abstract 20992 (T. D. 29673), held the commodity to be a manufactured article and dutiable as such. The two latter cases were appealed to the United States Circuit Court for the Southern District of New York, but prior to their decision the Court of Customs Appeals had been created and the cases were transferred under the law to that court. That court, in Rossman *v.* United States and Rossman Co. *v.* United States (1 Ct. Cust. Appls., 280; T. D. 31321), affirmed the decision of the Board of General Appraisers,

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concurring with the Circuit Court for the Southern District of Ohio, holding that the commodity in question was a manufactured article. Since then the decisions of this board have followed those well-considered cases and held that the commodity in question should be assessed as a nonenumerated manufactured article under section 6 of the law of 1897 and paragraph 480 of the law of 1909. That same holding continued until the claim was made that the commodity in question should be assessed under the provisions of paragraph 81 of the law of 1913, when this board in the case of W. White *et al.*, G. A. 7779 (T. D. 35723), held that the all-embracing language of paragraph 81 changed the classification of earthy or mineral substances that were not specially provided for, and hence stone that had been crushed and screened, that had been theretofore dutiable as a nonenumerated manufactured article, was, under paragraph 81 of the act of 1913, dutiable as earthy or mineral substances wholly or partially manufactured. This view of the change of the law has also been taken by the Court of Customs Appeals.

In the discussion of this subject we have treated crushed stone as identical with granito. The record in this case when considered in connection with the record as disclosed by the decisions before cited in the granito cases will disclose that there is no difference in the two so far as the principle is concerned, and that practically the only difference is that one is marble and one is stone, that one is of greater value than the other, and that they are not put to identical, though similar, uses. If marble chips or pieces of marble when put through a stone crusher and screened to size to be used in the manufacture of mosaic pavements are dutiable as a manufactured article, then trap rock or any other kind of stone substance when crushed in the same kind of a machine and put through the same kind of a screen, but to be used in concrete work or road building, is also so dutiable. The mere fact that marble chips are comparatively valueless, and that when imported as granito they had a value, has no other effect than to establish that the commodity was advanced in value by grinding, etc. Therefore, when stone is subjected to the same processes, though it had some value before and is rendered more valuable afterwards, in principle the same effect is produced.

Some attempt is made in the testimony with reference to a part of the commodity here under consideration to show that it has not been screened to size. The testimony, we think, scarcely establishes this fact; for it seems to be admitted by the witnesses that the commodity in question passed through what they called the "barrel screen," and hence was screened to size, but that in shipping it to this country they mixed it, as it made no difference to them about the size.

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We think the testimony fails in any material respect to differentiate the commodity in the case at bar from that which has been heretofore the subject of this board's and the courts' decisions, and we are not convinced by the arguments advanced by counsel that those decisions were erroneous. The protests are therefore overruled.

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CONCURRING OPINION.

WAITE, *General Appraiser:* I concur in the conclusion reached by my colleague in this case that the protests should be overruled. I am of the opinion that the commodity embraced within the various cases is dutiable under paragraph 81 rather than free under paragraph 549, as claimed by the importers. I base my conclusion upon the following:

(1) The evidence, I think, shows that the commodity is advanced in value. While it is true that the testimony shows that the cost of producing the uncrushed rock upon the dock at the quarry is greater than the cost of producing the rock in the same place after it has passed through the crusher, I think the evidence clearly shows that the crushed rock, or the rock treated in the manner in which the rock in this case has been treated, is more valuable at the place of delivery than that which has not been crushed or passed over or through the screens.

(2) Crushing has been held to be a "process of manufacture" within the meaning of the statute. In Rossman *v.* United States (1 Ct. Cust. Appls., 280; T. D. 31321) the Court of Customs Appeals, passing on granito, said:

> If grinding be a process of manufacture, we see no good reason for saying that crushing is not equally so. The operations are similar, the main difference being that in grinding the substance treated is more finely pulverized than is ordinarily understood to result from the crushing process. It is rather a difference of degree than otherwise.

In Myers *v.* United States (1 Ct. Cust. Appls., 506; T. D. 31531) the court, in holding that corundum ore obtained from crushing rock in which it was deposited was not classifiable as a crude mineral, said:

> To bring the mineral within the paragraph, it must be crude—that is, not advanced in value or condition by refining, grinding, or other process of manufacture. Clearly a process of manufacture so similar to grinding as is crushing should be held to be within the general language "other process of manufacture" used in this paragraph and in close relation to the word "grinding."

(3) The board in White's case, G. A. 7779 (T. D. 35723), considering the classification of stone which had been crushed and screened, expresses the opinion that Congress, in the law of 1913, intended to

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provide specifically for this class of merchandise in paragraph 81 as "earthy or mineral substances wholly or partially manufactured." That case, I think, is controlling here.

I rest my conclusion upon the facts and the law as above set forth.

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## (T. D. 36720—G. A. 7971.)

### *Ship's equipment.*

SHIP'S EQUIPMENT—REPAIR PARTS OF PUMPS.

Valves, guards, springs and studs, piston rods, rings, and oil-bucket rings, constituting repair parts of steam pumps, and carried aboard the vessel when at sea that the pumps may be repaired in the event they become disabled or need repair while the vessel is at sea are "material of foreign construction necessary in the repair of the machinery of a vessel" within the meaning of that provision of section 5 of the Panama Canal act (37 U. S. Stat., 562). They are therefore free of duty.

United States General Appraisers, New York, October 4, 1916.

In the matter of protest 803924 of Harlan & Hollingsworth Corporation against the assessment of duty by the collector of customs at the port of Philadelphia.

[Reversed.]

Importers not represented by counsel.

*Bert Hanson*, Assistant Attorney General (*John R. Rafter*, special attorney), for the United States.

Before Board 3 (WAITE and HAY, General Appraisers).

HAY, *General Appraiser:* The protestants in this case imported into the United States three steam pumps to be used and become a part of the machinery and equipment of a certain steamship being built at Wilmington, Del. At the same time there were imported certain valves, guards, springs and studs, piston rods, rings, and oil-bucket rings, which were duplicates of articles which constituted a part of the pumps in this case; in other words, it is shown by the testimony that the articles in question are repair parts of the three steam pumps; that these repair parts are carried aboard the vessel when at sea that they may be ready to repair the pumps in the event they become disabled or need repair while the vessel is at sea. No question seems to have been raised as to the compliance with the regulations. The steam pumps were admitted free of duty, but free entry was denied to the repair parts above enumerated. The protestants claim free entry under section 5 of the Panama Canal act (37 U. S. Stat., 562). So much of that section as is pertinent to the issue here involved reads as follows:

That all materials of foreign production which may be necessary for the construction or repair of vessels built in the United States, and all such materials necessary for the building or repair of their machinery, and all articles necessary for their outfit and equipment may be imported into the United States

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free of duty under such regulations as the Secretary of the Treasury may prescribe.

The spirit of this law unquestionably covers the parts of the pumps that are involved in this case, and we think its exact letter does. The parts in question are imported for the repair of the vessel. It would be unsafe for the vessel to put to sea without having the repair parts of these pumps on board, and when in the course of the wear and tear of the machinery the repair of the pumps becomes necessary the parts in question will undoubtedly be used in that way. They are, therefore, material of foreign construction necessary in the repair of the machinery of a vessel, and hence entitled to free entry under the provisions of this act.

The articles in question are also, in our judgment, entitled to free entry under subsection 6 of paragraph J of section 4, act of 1913. The deputy collector who refused free entry of these articles based his refusal upon certain instructions given by the Secretary of the Treasury to be found in T. D. 34150. We think that he misconstrued these instructions. The Secretary enumerates what articles are not admissible under subsection 5 and what are not admissible under subsection 6. He then enumerates what are not admissible under either subsection, and while the articles in question may come within the enumeration relative to subsection 5, they do not come within the enumeration which the Secretary makes relative to subsection 6, or those not admissible under either section. If they are admissible under either section or the Panama Canal act, they are entitled to free entry.

The protest is sustained and the collector directed to reliquidate the entry admitting the parts in question free of duty.

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## *Abstracts of decisions of the Board of General Appraisers.*

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*Board 1*—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

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BEFORE BOARD 1, OCTOBER 3, 1916.

**No. 40221.**—Protests 801846, etc., of Oelschlaeger Bros. et al. (New York).

PEDOMETERS—COMPASSES—COMPTEURS.—It is claimed in these protests that pedometers and tally registers or compteurs are dutiable as manufactures of metal at 20 per cent ad valorem under paragraph 167.

Opinion by SULLIVAN, G. A. On the authority of Abstract 39343, affirmed in United States *v.* Sussfeld (7 Ct. Cust. Appls., —; T. D. 36454), the pedometers were held dutiable under paragraph 167. The compasses, which are mainly used by woodsmen and lumbermen to indicate direction and also by mariners on boats, and the tally registers or compteurs, used for recording the number of persons through a gate or similar place, were also held dutiable under paragraph 167. G. A. 7824 (T. D. 35949) and Abstract 39074 followed.

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**No. 40222.**—Protest 797027 of G. A. & E. Meyer (New York).

MICROSCOPES—OPTICAL INSTRUMENTS.—The question here is whether hand reading glasses classified as optical instruments at 35 per cent ad valorem under paragraph 93, tariff act of 1913, are dutiable as microscopes at 25 per cent under paragraph 94.

Opinion by SULLIVAN, G. A. Upon stipulation of counsel the hand reading glasses in question were held dutiable under paragraph 94. Abstract 39936 followed.

**No. 40223.**—Protest 788386 of Butler Bros. (New York).

STEM WARE—METAL FLASHLIGHT CASES—ENAMELED STEEL WARE.—Glass stem ware, classified as articles composed wholly or in chief value of blown glass at 45 per cent ad valorem under paragraph 84, tariff act of 1913, is claimed dutiable as manufactures in chief value of glass at 30 per cent under paragraph 95. Flashlight cases composed in chief value of metal, classified as articles designed to be carried on the person at 60 per cent under paragraph 356, and merchandise classified as enameled steel ware at 25 per cent under paragraph 134, are claimed dutiable at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. Upon stipulation of counsel and on the authority of United States *v.* Fondeville (7 Ct. Cust. Appls., —; T. D. 36457), the stem ware was held dutiable under paragraph 95. The flashlight cases and the enameled steel ware were held dutiable at 20 per cent under paragraph 167. G. A. 7794 (T. D. 35822) followed.

**No. 40224.**—Protest 802664 of James P. Smith & Co. (New York).

DECORATED GLASS BOTTLES.—Molded glass bottles containing lime juice, decorated with a design in the form of roses on vines, classified as glass bottles, decorated, at 45 per cent ad valorem under paragraph 84, tariff act of 1913, are claimed dutiable as plain bottles suitable for use as containers at 30 per cent under paragraph 83.

Opinion by SULLIVAN, G. A. The bottles in question were held properly classified under paragraph 84. Abstract 39494 followed.

**No. 40225.**—Protest 802915 of Montag & Cassidy (New York).

MOHAIR COAT LININGS.—Coat linings classified as cloth in chief value of the hair of the Angora goat at 40 per cent ad valorem under paragraph 308, tariff act of 1913, are claimed dutiable as cloth in chief value of wool at 35 per cent under paragraph 288, or as coat linings under paragraph 290.

Opinion by BROWN, G. A. The mohair coat linings in question were held properly classified under paragraph 308. Rosenberg *v.* United States (7 Ct. Cust. Appls., —; T. D. 36510), affirming G. A. 7741 (T. D. 35541), followed.

**No. 40226.**—Protest 802921 of Sylvester & Levy (New York).

ALPACA LININGS.—It is claimed here that certain linings classified as cloth in chief value of the hair of the alpaca goat at 40 per cent ad valorem under paragraph 308, tariff act of 1913, are in chief value of wool of the sheep, dutiable at 35 per cent under paragraph 288 or 290.

Opinion by BROWN, G. A. The linings in question were held properly classified under paragraph 308. Rosenberg *v.* United States (7 Ct. Cust. Appls., —; T. D. 36510) followed.

**No. 40227.**—Protest 802914 of C. Bahnsen & Co., and protest 802290 of A. Walker & Co. (New York).

MOHAIR DRESS GOODS.—Mohair dress goods classified as cloth in chief value of the hair of the Angora goat at 40 per cent ad valorem under paragraph 308, tariff act of 1913, is claimed dutiable as cloth in chief value of wool at 35 per

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cent under paragraph 288, or as wool dress goods at the same rate under paragraph 290.

Opinions by BROWN, G. A. On the authority of Rosenberg *v.* United States (7 Ct. Cust. Appls., —; T. D. 36510), affirming G. A. 7741 (T. D. 35541), the mohair dress goods was held dutiable under paragraph 308, as classified.

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BEFORE BOARD 2, OCTOBER 3, 1916.

**No. 40228.**—Protests 801444, etc., of Kronfeld, Saunders & Co. et al. (New York).

SUFFICIENCY OF PROTEST—BEADED WEARING APPAREL.—These protests are lodged against the assessment of duty at 60 per cent ad valorem on "wearing apparel and other merchandise" and contain several alternative claims. These claims were held not to render the protests invalid. The goods were classified under paragraph 358.

Opinion by HOWELL, G. A. It appeared that all of the goods are ornamented with beads applied to the garments in the same manner as those passed upon by the court in Loewenthal *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464). The articles found to be composed in chief value of silk were held dutiable as silk wearing apparel at 50 per cent under paragraph 317; articles composed in chief value of cotton were held dutiable as cotton wearing apparel at 30 per cent under paragraph 256; and those in chief value of wool were held dutiable as wool wearing apparel at 35 per cent under paragraph 291.

**No. 40229.**—Protests 653734, etc., of A. J. Hague & Co. (New York).

SILK HAIR NETS.—Silk hair nets returned by the appraiser as having been made on the Lever or Gothrough machine, classified at 70 per cent ad valorem under paragraph 350, tariff act of 1909, are claimed dutiable at 60 per cent under paragraph 402.

Opinion by HOWELL, G. A. It was found that certain of the hair nets were made on a machine other than the Lever or Gothrough. They were held dutiable under paragraph 402. United States *v.* Mills (5 Ct. Cust. Appls., 534; T. D. 35178) followed. Protests sustained in part.

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BEFORE BOARD 3, OCTOBER 3, 1916.

**No. 40230.**—Protests 786763, etc., of M. J. Hogan (Milwaukee).

ARTIFICIAL ROOFING SLATE—MINERAL SUBSTANCES.—Merchandise called artificial roofing slate, classified as earthy or mineral substances under paragraph 81, tariff act of 1913, is claimed dutiable as a manufacture of asbestos under paragraph 367.

Opinion by HAY, G. A. It was found that the asbestos in the slate or shingles in question is the component material of chief value. The commodity was held dutiable as a manufacture of asbestos under paragraph 367.

**No. 40231.**—Protests 802683, etc., of W. White et al. (Detroit and Chicago).

BEEF WEASANDS.—Merchandise invoiced as "beef weasands," classified as nonenumerated manufactured articles under paragraph 385, tariff act of 1913, is claimed free of duty under paragraph 419.

Opinion by HAY, G. A. The commodity was found to be a part of the intestinal system of an animal of the bovine species, probably a part of the alimentary canal. It was held free of duty under the provisions of paragraph 419.

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**No. 40232.**—Protest 780642 of Cowen, Heineberg Co. (San Francisco).

BAMBOO BROOMS—BRUSHES—EJUSDEM GENERIS.

HAY, *General Appraiser:* The merchandise in this case is invoiced as bamboo brooms and assessed by the collector as brushes under paragraph 336, act of 1913. The protestant claims it is dutiable under the same paragraph of the law, but as brooms. This paragraph reads as follows:

336. Brooms, made of broom corn, straw, wooden fiber, or twigs, 15 per centum ad valorem; brushes and feather dusters of all kinds, and hair pencils in quills or otherwise, 35 per centum ad valorem.

In Cowen, Heineberg Co.'s case, Abstract 38158, this board held that a somewhat similar commodity was dutiable as brooms under this paragraph of the law. The record in that case, however, is not before us in this case and the case may only indicate to us what has hitherto been the view of this board with reference to the classification of similar merchandise. The case at bar was on the calendar at San Francisco, the port at which the merchandise was entered, and appearance there entered for the importers, but at the request of Government counsel it was transferred to New York and testimony there taken of a number of witnesses, but no one appeared for the importers. The testimony therefore is in a sense ex parte and, as it goes to a very narrow point, extremely unsatisfactory. We think it falls short of proving commercial designation under the rule quite definitely established by this board. See Pacific Mail Steamship Co.'s case, G. A. 7183 (T. D. 31377), and Robert B. Way's case, G. A. 7327 (T. D. 32271). The doctrine of *ejusdem generis* applied to paragraph 336 would scarcely bring the commodity in question within the brush provision, but the case has been so unsatisfactorily tried that we do not feel like reaching a definite conclusion as to the proper classification of the merchandise. The protest is therefore overruled upon the presumption of law, without giving affirmative approval to the action of the collector.

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BEFORE BOARD 1, OCTOBER 6, 1916.

**No. 40233.**—Protest 786790-57503 of G. W. Sheldon & Co. (Chicago).

BERGER LOUPES—OPTICAL INSTRUMENTS—COMPASSES—JEWELRY.—So-called "Berger loupes," classified as optical instruments at 35 per cent ad valorem under paragraph 93, tariff act of 1913, are claimed dutiable as microscopes at 25 per cent under paragraph 94. Compasses and compass watch charms, classified as jewelry at 60 per cent under paragraph 356, are claimed dutiable as manufactures of metal under paragraph 167.

A compass 3 inches in diameter by five-eighths of 1 inch thick, inclosed in a metal case having a tight-fitting cover, was found to be well fitted for practical use and held dutiable as a manufacture of metal under paragraph 167. G. A. 7824 (T. D. 35949) followed. Compass watch charms were held properly classified under paragraph 356. The Berger loupes were found to be goggles, composed of black metal and rubber, with two lenses, which magnify. They were held not classifiable as optical instruments under paragraph 93, but dutiable as microscopes under paragraph 94. G. A. 7697 (T. D. 35220), affirmed in United States *v.* Bliss (6 Ct. Cust. Appls., 433; T. D. 35980), G. A. 7859 (T. D. 36174), and Abstracts 38900 and 39580 followed.

SULLIVAN, *General Appraiser:* * * * The construction placed on paragraph 93 should be necessarily strict. It was not intended to include all instruments that had optical properties within that provision. If it was so intended, there was no necessity to enact paragraph 94, for every instrument that magnifies



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has optical properties. But that does not make it an optical instrument. Some significance must be given to the ordinary meaning of the term "optical instrument." The construction placed upon ordinary words must be the ordinary one. What naturally strikes the mind when the term "optical instrument" is used? Does it mean a telescope or a microscope? The ordinary mind would not so understand it. It means an instrument that has for its purpose the correction of vision, the aid of the eye, or pertaining to the science of optics. The Berger loupes in question do not come within that category. They may magnify, and therefore make more plain the object. But that is not correcting vision. This merchandise comes more clearly within the class of microscopes covered by paragraph 94. * * *

**No. 40234.**—Protest 800065 of Butler Bros. (New York).

LACQUERED WOODEN PAILS—TOYS—FLASHLIGHT CASES.—Small lacquered wooden pails, used as containers for perfume bottles or as toothpick holders or combination salt and pepper holders, classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as manufactures of wood at 15 per cent under paragraph 176, or as manufactures of pulp or indurated fiber ware at 25 per cent under paragraph 355. Flashlight cases with lamps, classified at 60 per cent under paragraph 356, are claimed dutiable as manufactures of metal under paragraph 167 at 20 per cent.

Opinion by SULLIVAN, G. A. It was found that the pails, while they may be played with by children, are reasonably fitted for other purposes. They were held dutiable as manufactures of wood under paragraph 176. Illfelder *v.* United States (1 Ct. Cust. Appls., 109; T. D. 31115) followed. The flashlight cases were held dutiable as manufactures of metal under paragraph 167.

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BEFORE BOARD 2, OCTOBER 6, 1916.

**No. 40235.**—Protest 794410 of J. W. Hampton, jr., & Co. (New York).

BULLIONS—MANUFACTURES OF WIRE.

FISCHER, *General Appraiser:* This protest covers two varieties of spiral thread, one composed of silver-colored metal wire and the other of metal wire wound with black silk. Duty was levied on said articles at the rate of 25 per cent ad valorem under the provision in paragraph 150 of the act of 1913 for "bullions," and they are claimed to be properly dutiable at but 15 per cent ad valorem under the general provision in paragraph 114 of said act for wire and manufactures thereof.

The proof offered on behalf of the importers falls far short of substantiating their claim. As disclosed by the testimony of the single witness who appeared in their behalf, the importers have utterly failed to overcome the twofold burden which necessarily rested upon them of affirmatively proving (1) that the articles in question were not definitely, uniformly, and generally bought, sold, and recognized throughout the trade and commerce of this country as bullions; and (2) that the tariff provision for "bullions" as commercially understood includes a class of merchandise from which the present articles would be excluded. As was said by Judge De Vries in the case of Acker, Merrall & Condit Co. *v.* United States (1 Ct. Cust. Appls., 328; T. D. 31431)—

The further requisite, however, is necessary in assigning to a phrase a commercial limitation or application that it must be proven not alone that the imported merchandise is not classed therewithin, but there must be assigned by proof to that phrase a scope and meaning which is clearly, definitely, and uniformly understood throughout the United States which includes some other merchandise and excludes the imported merchandise. Claflin *v.* Robertson (38 Fed., 92); Sidenberg *v.* Robertson (41 Fed., 763).

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Even though the importers' testimony established, which it does not, that these articles are commercially within the class of articles recognized by the trade as "bullions," it is that of a single interested witness and is therefore insufficient to prove commercial designation. United States *v.* Oberle (1 Ct. Cust. Appls., 527; T. D. 31545).

The protest is accordingly overruled and the decision of the collector affirmed.

**No. 40236.**—Protest 787823 of B. Lissberger & Co. (New York).

TIN ASHES—BLACK OXIDE OF TIN.

FISCHER, *General Appraiser:* This protest is limited to the merchandise described in the first item on the invoice as "4 brls. tin ashes, 3,162 lbs." This the appraiser returned as consisting of zinc dross, containing 82.40 per cent zinc. The collector levied duty thereon at the rate of 10 per cent ad valorem, under paragraph 154 of the act of 1913, as metals unwrought. The importers contend that only the contents of one of the four barrels—that marked "D-3"—were properly so classifiable, the other three barrels containing tin ashes, as invoiced; and that the latter merchandise should have been accorded free entry under the provision in paragraph 631 of said act for "black oxide of tin."

The facts in the case, as established by uncontradicted proof, show the contention of the importers to be well founded. It appears that these importers purchased from the Steel Co. of Canada (Ltd.) what purported to be 30 packages of tin ashes; that the importation was immediately turned over to the Union Smelting & Refining Co. for examination and tests; that as a result of such tests it was discovered that all but one of the packages—the barrel marked "D-3"—contained tin ashes, as indicated by the invoice; that the excepted barrel contained not tin ashes but zinc ashes, and that the allowance had been requested and made therefor by the shippers to the purchasers.

In G. A. 5179 (T. D. 23872) this board said:

> It appears conclusively from the evidence before us that tin dross is generally recognized and known commercially as "black grain tin," "black oxide of tin," "scruff," "tin ash," and "tin dross," the terms being synonymous and interchangeably used in the trade, and that there is no other nor different form of grain tin imported into this country. "Black grain tin" and "black oxide of tin" are designations commonly used in the commerce and trade of this country to describe all oxides of tin that are not recognized as commercial stannic acid.

In view of the facts established of record herein, we sustain the claim alleged under paragraph 631 in so far as it purports to cover the three barrels shown to contain tin ashes. In all other respects, however, the protest is overruled.

**No. 40237.**—Protest 803829 of Hipp. Didisheim & Bro. (New York).

TIMERS.—Stop watches specially designed for timing horse races and other speed contests, classified as watches at 30 per cent ad valorem under paragraph 161, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by FISCHER, G. A. Upon stipulation of counsel the timers in question were held dutiable under paragraph 167.

**No. 40238.**—Protest 801726 of J. J. Buchey & Co. (Philadelphia).

UMBRELLA HANDLES.—Umbrella handles composed of wood with metal tips plated with gold or silver are claimed dutiable at 15 per cent ad valorem under paragraph 176, tariff act of 1913, as manufactures of wood, rather than as plated articles at 50 per cent under paragraph 167, as classified.

Opinion by FISCHER, G. A. It was found that wood is the component of chief value in the umbrella handles. They were held dutiable under paragraph 176, as claimed.

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**No. 40239.**—Protests 794554, etc., of Gustaf Lundberg (Boston).

BAR IRON.—Round bar iron imported in 10-foot lengths, classified as wire rods at 10 per cent ad valorem under paragraph 113, tariff act of 1913, is claimed dutiable as bar iron at 5 per cent under paragraph 103.

Opinion by FISCHER, G. A. On the authority of Abstract 39871 the merchandise in question was held dutiable as bar iron under paragraph 103.

**No. 40240.**—Protests 791776–58031, etc., of Frank S. Betz Co. (Chicago).

DENTAL AND SURGICAL INSTRUMENTS.—Dental and surgical instruments classified under the provision in paragraph 166, tariff act of 1913, for "nippers and pliers of all kinds," at 30 per cent ad valorem, are claimed dutiable at 20 per cent under paragraph 167.

Opinion by FISCHER, G. A. The instruments in question were held dutiable under paragraph 167. Koch *v.* United States (6 Ct. Cust. Appls., 534; T. D. 36148) and G. A. 7907 (T. D. 36404) followed.

**No. 40241.**—Protest 787595 of Abraham & Straus (New York).

CURLING IRONS.—Curling irons classified as nippers and pliers at 30 per cent ad valorem under paragraph 166, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by FISCHER, G. A. The articles were found substantially similar to those passed upon in G. A. 7879 (T. D. 36272). They were held dutiable under paragraph 167.

**No. 40242.**—Protests 773667, etc., of Chas. F. Hubbs & Co. et al. (New York and Boston).

KRAFT PAPER—SULPHITE PAPER—WRAPPING PAPER.—Thin brown paper known as "Kraft" stock and thin white paper known as "sulphite" stock, classified as tissue paper at 30 per cent under paragraph 323, tariff act of 1913, is claimed dutiable as wrapping paper at 25 per cent under paragraph 328.

Opinion by FISCHER, G. A. Certain Kraft paper of excessive weight and substantial texture was held not classifiable as tissue paper, but dutiable as wrapping paper under paragraph 328. Protests sustained in part.

**No. 40243.**—Protest 784804–57167 of C. D. Stone & Co. (Chicago).

IMITATION PARCHMENT PAPER.—Merchandise invoiced as manifold paper, classified as imitation parchment paper at 35 per cent ad valorem under paragraph 324, tariff act of 1913, is claimed dutiable at 25 per cent under the provision in paragraph 326 for "typewriter, and onionskin and imitation onionskin papers."

Opinion by FISCHER, G. A. On the authority of Abstract 38462, affirmed in Stone *v.* United States (7 Ct. Cust. Appls., —; T. D. 36453), the paper in question was held properly classified under paragraph 324.

**No. 40244.**—Protest 784615 of Chas. F. Hubbs & Co. (New York).

SURFACE DECORATED WRAPPING PAPER.—Decorated wrapping paper classified at 35 per cent ad valorem under paragraph 324, tariff act of 1913, is claimed dutiable as wrapping paper not specially provided for at 25 per cent under paragraph 328.

Opinion by FISCHER, G. A. Protest unsupported; overruled.

**No. 40245.**—Protest 799490 of T. D. Downing & Co. (New York).

SCIENTIFIC TEXTBOOKS.—Books entitled "Notes on Dental Metallurgy for the Use of Dental Students and Practitioners," by W. Bruce Hepburn, L. D. S. (Glasgow), classified at 15 per cent ad valorem under paragraph 329, tariff act of 1913, are claimed entitled to free entry as textbooks under paragraph 426.

Opinion by FISCHER, G. A. The books in question were found to be scientific textbooks used in dental schools, entitled to free admission under paragraph 426. G. A. 7950 (T. D. 36611) followed.

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BEFORE BOARD 3, OCTOBER 6, 1916.

**No. 40246.**—Protests 797269, etc., of Tokstad-Burger Co. (New York).

SANDWICH PASTE — MANUFACTURED ARTICLES. — Merchandise invoiced as "crême sandwich truffee," classified as poultry prepared in any manner, under paragraph 229, tariff act of 1913, is claimed free of duty as "meats of all kinds," under paragraph 545.

Opinion by WAITE, G. A. The commodity which is described as sandwich paste bears a label stating that the paste is composed of goose liver, pork, eggs, truffles, and spices, but it does not appear in what proportions. Protests overruled. Abstract 39858 noted.

**No. 40247.**—Protests 733315, etc., of Storrs & Harrison Co. (Cleveland).

FUNKIA—NURSERY STOCK.—Funkia or funkia roots classified as nursery stock at 15 per cent ad valorem under paragraph 211, are claimed dutiable at 50 cents per thousand under the provision for roots cultivated for their flowers or foliage in paragraph 210, tariff act of 1913.

Opinion by WAITE, G. A. In accordance with Abstract 37844 the funkia roots in question were held dutiable at 50 cents per thousand under paragraph 210, as claimed.

**No. 40248.**—Protest 799570 of Laco Philips Co. (New York).

FREIGHT CHARGES—MARKET VALUE.

HAY, *General Appraiser:* This protest was submitted upon the following stipulation:

It is hereby stipulated and agreed by and between the attorneys for the respective parties herein that the following facts may be accepted as proved:

(1) That the merchandise consists of incandescent lamps shipped from Eindhoven, Holland.

(2) That the town of Eindhoven, Holland, is the principal market for such lamps.

(3) That such lamps are invoiced at various prices, which prices were stated on the invoice to include packing and freight to Rotterdam, Holland, the port of shipment.

(4) That on entry certain deductions were made from the invoiced prices for inland freight and other charges as nondutiable items.

(5) That the examiner disallowed a portion of the freight and other charges.

(6) That the importers thereupon appealed to the single general appraiser, and that said single general appraiser disallowed a certain portion of the freight charges.

(7) That the collector thereupon took regular and additional duty upon the value found by adding to the entered value the amount of freight disallowed by the single general appraiser.

(8) That the collector assessed additional duty on said value at a percentage found by deducting the entered value from said value and dividing the difference by the entered value.

(9) That the appraiser's action is noted on each invoice, as follows: "Appraiser advances to make market value by allowing only one-fourth of amount deducted by importer for freight and shipping charges."

If the facts in this case are correctly stated by the stipulation, and we must assume that they are, both the appraiser and the general appraiser exceeded their authority. Under the decision of the Court of Customs Appeals in United States *v.* Spingarn Bros. (5 Ct. Cust. Appls., 2; T. D. 34002) charges of every character are to be determined by the collector. In the case at bar it is perfectly apparent that the market value should have been determined at Eindhoven, Holland, which the stipulation states is the principal market for the commodity in question. In determining the market value of the merchandise at Eindhoven freight from there to the seaport is no more dutiable than the ocean freight or the freight on this side of the ocean, if any. This being the case, it was no function of appraisement to determine the amount of the freight, but

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this the collector should ascertain in the liquidation of the entry. In other words, it is the duty of the appraiser simply to determine the market value of the merchandise in the principal market of the country from whence it is imported at the time of exportation therefrom. It is the duty of the collector not only to determine the rate but the amount of duty to be paid. The appraiser having ascertained the market value and the collector deciding the rate of duty, any deduction made by the importer on his invoice from the invoice value would, if the same is not proper, be disallowed by the collector in the liquidation of the entry. If the freight charge, therefore, from Eindhoven to Rotterdam is greater than the importer paid, the collector could have very properly refused to allow the deduction made upon the invoice, but it was not a question for the appraiser or the general appraiser to determine. From this it will be seen that the merchandise was not advanced by the appraiser or the general appraiser. The appraised value, therefore, not exceeding the entered value of the merchandise, the provisions of paragraph I of section 3, tariff act of 1913, do not apply. The collector will therefore reliquidate the entry, omitting from the reliquidation the additional duty assessed by him by the application of paragraph I.

**No. 40249.**—Protest 781858 of Mark Cross Co. (New York).

LEATHER ARTICLES—MANUFACTURES OF METAL.—Various articles are claimed dutiable according to the component material of chief value.

Opinion by HAY, G. A. Certain articles classified as plated with gold or silver at 50 per cent ad valorem under paragraph 167, tariff act of 1913, were found not plated and held dutiable at 20 per cent under the same paragraph. Articles found to be in chief value of leather were held dutiable at 30 per cent under paragraph 360. Articles composed of glass, silk, or china, and silver or silver-plated metal, were held properly classified at 50 per cent under paragraph 167. Protest sustained in part.

**No. 40250.**—Protest 801865 of Borrelli & Vitelli (New York).

NECKLACE CLASPS.—Necklace clasps classified at 60 per cent ad valorem were claimed dutiable at 50 per cent under paragraph 356, tariff act of 1913.

Opinion by HAY, G. A. On the authority of Mamluck *v.* United States (6 Ct. Cust. Appls., 556; T. D. 36198) the necklace clasps in question were held dutiable at 50 per cent under paragraph 356.

**No. 40251.**—Protests 801130, etc., of Manufacturers' Paper Co. (New York).

GRINDSTONES.—Merchandise classified as mineral substances under paragraph 81, tariff act of 1913, is claimed dutiable as grindstones under paragraph 100.

Opinion by HAY, G. A. On the authority of Abstract 39860 the grindstones in question were held dutiable under paragraph 100.

**No. 40252.**—Protests 793993, etc., of H. B. D'Oyley et al. (Savannah and Philadelphia).

TEA CONTAINERS.—Free entry is claimed here for tea containers under paragraph 627, tariff act of 1913.

Opinion by HAY, G. A. United States *v.* Wright (6 Ct. Cust. Appls., 528; T. D. 36147) followed as to tea containers.

**No. 40253.**—Protest 784992 of Chas. F. Hubbs & Co. (New York).

WRAPPING PAPER—FAVORED NATIONS.—Wrapping paper classified under paragraph 415, tariff act of 1909, is claimed free of duty under section 2 of the act of July 26, 1911, by virtue of the favored-nation clause in existing treaties.

Opinion by HAY, G. A. American Express Co. *v.* United States (4 Ct. Cust. Appls., 146; T. D. 33434) followed as to the wrapping paper in question. Protest sustained in part.

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(T. D. 36721.)

*Car manifests.*

Duplicate car manifests provided for in paragraph 21 of T. D. 33557 of June 16, 1913, no longer required.

TREASURY DEPARTMENT, *October 10, 1916.*

*To collectors and other officers of the customs:*

Attention is invited to paragraph 21 of T. D. 33557, which requires duplicate inward foreign manifests of merchandise imported by rail or highway, one copy of which is to be forwarded to the Auditor for the Treasury Department with the entries.

The department is in receipt of a report from the auditor in which he states that these manifests are of no particular value in the liquidation of the entries.

As these duplicate manifests are not required by law and are of no value in the liquidation and involve considerable expense in their preparation by transportation companies and subsequent handling by customs officers, paragraph 21 of T. D. 33557 is hereby revoked.

Hereafter only one copy of the inward foreign manifests of cars and vehicles will be required, which copy will be filed at the port of entry.

(104030.) ANDREW J. PETERS, *Assistant Secretary.*

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(T. D. 36722.)

*Amendment to consular regulations.*

TREASURY DEPARTMENT, *October 11, 1916.*

*To collectors and other officers of the customs:*

The appended Executive order, dated September 28, 1916, amending the Consular Regulations of 1896, is published for the information and guidance of the officers of the customs.

(103512.) ANDREW J. PETERS, *Assistant Secretary.*

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EXECUTIVE ORDER.

Paragraph 692 of the Consular Regulations of 1896 is hereby amended to read as follows:

692. *Currency certificates.*—When the price or value of merchandise obtained by purchase, shipped pursuant to an agreement of purchase, or consigned for sale in the United States is expressed in the invoice in depreciated currency, a currency certificate (form 144) must be attached to the invoice showing the percentage of depreciation as compared with the corresponding standard coin currency and the value in such standard coin currency of the total amount of the depreciated currency stated in the invoice. (Rev. Stat. sec. 2903; T. D.

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17252.) This certificate should show, not the value of the depreciated currency in money of account of the United States, but its value in the terms of the standard coin currency in comparison with which the currency stated in the invoice is depreciated. (T. D. 11314, 17170.)

In the assessment of duty the currency of the invoice is reduced to the money of account of the United States upon the basis of the values of foreign coins at the date of shipment, as proclaimed by the Secretary of the Treasury for the first day of January, April, July, and October of each year. (Tariff of 1894, sec. 25; T. D. 16921.) The date of the consular certification of any invoice shall, for the purposes of this section, be considered the date of exportation. (Tariff of 1894, sec. 25.) In the absence of a currency certificate no allowance will be made for depreciated currency. (T. D. 15435.)

When an invoice is certified by a consul of a nation at the time in amity with the United States, or by two respectable merchants, as provided by section 2844, Revised Statutes, the currency certificate required by section 2903, Revised Statutes, may be issued by the foreign consul or the two respectable merchants who certify the invoice.

For statistical purposes, currency certificates are required for all invoices of merchandise wherein the price or value is expressed in depeciated currency, without regard to the dutiable or nondutiable character of the merchandise.

WOODROW WILSON.

THE WHITE HOUSE, *28 September, 1916.*

[No. 2462.]

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## (T. D. 36723.)

### *Drawback on braids and hats.*

Drawback on braids and hats manufactured by the William F. Chiniquy Co., of Chicago, Ill., with the use of imported hemp braids.

TREASURY DEPARTMENT, *October 12, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on imported hemp braids exported after having been dyed, bleached, stained, redyed, rebleached, or recolored by the William F. Chiniquy Co., of Chicago., Ill., and on hats manufactured by the said company with the use of such braids.

A manufacturing record shall be kept, showing, in the case of each lot of imported hemp braid dyed, bleached, stained, redyed, rebleached, or recolored for exportation with benefit of drawback, the lot number and date of manufacture, the number of pieces, linear yards, width, and color of the braid produced, whether dyed, bleached, stained, redyed, rebleached, or recolored, and the quantity, character, and identity of the imported hemp braid appearing therein. A record shall also be kept, showing, in the case of each lot of hats manufactured for exportation with benefit of drawback,

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the lot number and date of manufacture, the number of hats of each kind, style, and size produced, and the quantity and identity of imported braid appearing therein. Sworn abstracts from such manufacturing records shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported braid appearing in the exported braids or hats, as shown by the abstracts from the manufacturing records.

The sworn statement of the manufacturers, dated September 15, 1916, is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on the articles covered thereby exported on or after September 18, 1916.

Respectfully, ANDREW J. PETERS,
(102913-1.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Chicago, Ill.*

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(T. D. 36724.)

*Drawback on cars and parts of cars.*

Drawback on cars and parts of cars manufactured by the Pullman Co., of Chicago, Ill., with the use of imported materials.—T. D. 22439 of August 18, 1900, T. D. 24556 of July 13, 1903, T. D. 26601 of July 25, 1905, and T. D. 33400 of May 8, 1915, revoked.

TREASURY DEPARTMENT, *October 13, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on cars and parts of cars manufactured by the Pullman Co., of Chicago, Ill., with the use of imported materials or with the use of materials manufactured with the use of imported materials covered by drawback rates now existing or which may be promulgated in the future.

Records shall be kept in the manner described in the sworn statement of the manufacturers, dated September 6, 1916, transmitted herewith, showing, in the case of each lot of cars or parts of cars manufactured for exportation with benefit of drawback, the lot or construction number thereof, the number of cars or parts of cars of each kind produced, and the quantity and identity of each kind of imported or drawback material appearing therein. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The quantity of imported or drawback material of each kind which may be taken as a basis for the allowance of drawback may equal the quantity appearing in the exported cars or parts of cars, as shown by the abstract from the manufacturing record.

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T. D. 22439 of April 18, 1900, T. D. 24556 of July 13, 1903, T. D. 26601 of July 25, 1905, and T. D. 33400 of May 8, 1915, are hereby revoked.

Respectfully,
(98249.)
COLLECTOR OF CUSTOMS, *Chicago, Ill.*

ANDREW J. PETERS,
*Assistant Secretary.*

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(T. D. 36725.)

*Sculpture.*

Evidence required for sculpture and statuary under paragraphs 376 and 652, tariff act of 1913.

TREASURY DEPARTMENT, *October 13, 1916.*

SIR: The department duly received your letter of May 9, 1916, relative to the classification of carved ivory figures as per sample submitted.

The sample in question is a miniature portraying the figure of a child and appears to show professional skill and artistic merit and to fall within the scope of the term "sculpture" as defined by the Court of Customs Appeals in T. D. 36309. It appears that the articles are carved and the name of the one said to have produced them is given, but it does not appear whether there has been submitted an artist's certificate or other evidence that the articles were executed by or under the supervision of a professional sculptor or evidence that they are either originals or first or second replicas or reproductions.

Paragraph 652 of the tariff act of 1913 provides for the free entry of orignal sculptures or statuary, including not more than two replicas or reproductions of the same, and also provides that the terms "sculpture" and "statuary" as used in the paragraph shall be understood to include professional productions of sculptors only.

The proofs required as to originality, etc., under paragraph 652, as provided in T. D. 36330, question 63, are as follows:

First. Certificate of artist who executed the article, whether original or first or second replicas.

Second. If shown impossible to produce artist's certificate, declaration of seller or shipper may be accepted.

Third. In the absence of the foregoing, and satisfactory explanation therefor, importer's oath may be received. The department is of the opinion that in the case of sculptures and statuary the certificate, declaration, or oath, as the case may be, should also show that the artist was a professional sculptor and that the articles were executed by him or under his supervision. The name of the sculptor and the place of production of the articles should also be shown, as provided in article 394 of the Customs Regulations of 1915. If such

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documents are furnished and you are satisfied of their correctness and the report of the appraiser indicates that the articles possess artistic merit, they should be passed free of duty under paragraph 652.

In T. D. 36197 the Court of Customs Appeals held that "sculpture," as used in paragraph 376, is the production of a professional sculptor and must be made by a professional sculptor or under his supervision. The department is of the opinion, therefore, that as a condition precedent to the classification of a piece of sculpture or statuary as a work of art under paragraph 376 of the tariff, proof should be produced that the article was executed by or under the supervision of a professional sculptor, and the report of the appraiser should indicate that it possesses artistic merit.

The evidence required in such cases should be—

First. Certificate of the artist that he is a professional sculptor, and that the articles were executed by him or under his supervision, and that they are copies, replicas, or reproductions (other than the first or second replicas or reproductions).

Second. If shown impossible to produce artist's certificate, the declaration of seller or shipper may be accepted.

Third. In the absence of the foregoing and satisfactory explanation therefor the importer's oath may be received. The name of the sculptor and place of production of the articles should be shown. If such evidence is presented and you are satisfied of the correctness thereof, and the report of the appraiser indicates that the articles possess artistic merit, they should be assessed with duty at the rate of 15 per cent ad valorem under paragraph 376.

Articles of ivory not falling, under the foregoing rulings, within paragraphs 652 or 376 should, in the opinion of the department, be assessed with duty at the rate of 35 per cent ad valorem as manufactures of ivory under paragraph 367 of the tariff.

You will be governed accordingly.

Respectfully, ANDREW J. PETERS,
(67782–4.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Los Angeles, Cal.*

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(T. D. 36726.)

*Flax knit underwear.*

**Flax knit underwear dutiable at the rate of 40 per cent ad valorem as wearing apparel composed wholly of flax under paragraph 278, tariff act of 1913.**

TREASURY DEPARTMENT, *October 14, 1916.*

SIR: The department is in receipt of your letter of the 4th instant, inclosing a communication from the appraiser at your port, relative to a proposed change in the classification of flax knit underwear.

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It appears that it has been the practice to classify such merchandise as dutiable at the rate of 30 per cent ad valorem under paragraph 261 of the tariff act of 1913, and it is now proposed to change the classification to that of wearing apparel composed wholly of flax dutiable at 40 per cent ad valorem under paragraph 278 of the said act.

The provisions in question are as follows:

Par. 261. Shirts, drawers, pants, vests, union suits, combination suits, * * * and all underwear and wearing apparel, of every description, not specially provided for in this section, made wholly or in part on knitting machines or frames, or knit by hand, finished or unfinished, * * * composed of cotton or other vegetable fiber, 30 per centum ad valorem.

Par. 278. * * * Wearing apparel composed wholly of flax, * * * 40 per centum ad valorem.

Either provision, in the absence of the other, it appears, would cover the merchandise; and if the two provisions are equally applicable, the higher rate should apply, in accordance with the rule of classification in paragraph 386 of the tariff. Further, the provisions in paragraph 261 are qualified by the clause "not specially provided for," while the provision in question of paragraph 278 is not so qualified. The provision of paragraph 278 would therefore appear to be the more specific, following the principle enunciated in T. D. 25340 and T. D. 35388.

The department therefore concurs in the proposed change in classification, and you will assess duty on merchandise of the character in question imported or withdrawn from warehouse 30 days after the date hereof at the rate of 40 per cent ad valorem as wearing apparel composed wholly of flax under paragraph 278 of the tariff act of 1913.

Respectfully, ANDREW J. PETERS,
(98908.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36727.)

*Seed-importation act of August 24, 1912, as amended.*

Joint regulations of the Secretary of Agriculture and the Secretary of the Treasury.

TREASURY DEPARTMENT, *October 16, 1916.*

*To collectors and other officers of the customs:*

The appended joint regulations of the Secretary of Agriculture and the Secretary of the Treasury for the enforcement of the seed-importation act of August 24, 1912, as amended by the agricultural appropriation act of August 11, 1916, are hereby promulgated for your information and guidance.

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The principal changes made by these regulations, as compared with those published in T. D. 35363 of May 3, 1915, are as follows:

(1) Definitions of rye grass and vetch are included, the original act having been extended by the amending act referred to above so as to cover these seeds.

(2) More exact instructions for the sampling of screenings which result from the recleaning of seed in bond are provided.

(3) More definite disposition is provided for the various classes of screenings removed from seed cleaned in bond.

(4) Provision is made for the mixing of seeds of similar quality upon a written permit of the Secretary of Agriculture.

(92655–21.) ANDREW J. PETERS, *Assistant Secretary.*

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(T. D. 36728.)

*Drawback on lead articles and products.*

Drawback on lead articles and products manufactured by the National Lead Co., of New York, N. Y., with the use of imported lead, antimonial lead, antimony, and linseed.—T. D. 10692 of February 7, 1881, T. D. 11782 of September 17, 1891, department letter of February 15, 1894 (5022g), T. D. 22405 of August 2, 1900, T. D. 23294 of October 1, 1901, T. D. 23500 of January 31, 1902, T. D. 23899 of July 26, 1902, T. D. 24123 of December 29, 1902, T. D. 25856 of December 19, 1904, T. D. 26043 of February 9, 1905, T. D. 27121 of February 14, 1906, T. D. 29977 of September 7, 1909, and T. D. 33353 of April 22, 1913, revoked.

TREASURY DEPARTMENT, *October 16, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on lead articles and lead products manufactured by the National Lead Co., of New York, N. Y., with the use of imported lead, antimonial lead, antimony, and linseed, in accordance with the company's sworn statement of September 7, 1916, which is transmitted herewith.

A record shall be kept in the manner described in the sworn statement of the manufacturers, above referred to, and a sworn abstract from such record shall be filed with the drawback claim, showing the kind of article or product manufactured, the quantity produced, the net quantity and identity of each kind of imported material used in the manufacture thereof, the quantity of imported material appearing in the finished product, the kind and quantity of valuable waste resulting, and, if an allowance for loss by volatilization is to be claimed, the amount of such loss. The abstract shall further show, in the case of sugar of lead, the quantity and value of sugar of lead of each grade produced.

In liquidation, the quantity of imported material which may be taken as a basis for the allowance of drawback shall not exceed the quantity used in the manufacture of the exported articles or prod-

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ucts, less the quantity which the value of the waste will replace, as shown by the abstract from the manufacturing record, the drawback accruing in the case of sugar of lead to be distributed between the several grades according to their relative values.

T. D. 10692 of February 7, 1881, T. D. 11782 of September 17, 1891, department letter of February 15, 1894 (5022g), T. D. 22405 of August 2, 1900, T. D. 23294 of October 1, 1901, T. D. 23500 of January 31, 1902, T. D. 23899 of July 26, 1902, T. D. 24123 of December 29, 1902, T. D. 25856 of December 19, 1904, T. D. 26043 of February 9, 1905, T. D. 27121 of February 14, 1906, T. D. 29977 of September 7, 1909, and T. D. 33353 of April 22, 1913, are hereby revoked.

Respectfully,
(103396.)
COLLECTOR OF CUSTOMS, *New York.*

ANDREW J. PETERS,
*Assistant Secretary.*

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(T. D. 36729.)

*Drawback on metal powder.*

Drawback on metal powder manufactured by the Nassau Smelting & Refining Works, of New York, N. Y., with the use of imported antimony.

TREASURY DEPARTMENT, *October 16, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on metal powder manufactured by the Nassau Smelting & Refining Works, of New York, N. Y., with the use of imported antimony.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated August 25, 1916, transmitted herewith, showing, in the case of each lot of metal powder manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity and identity of imported antimony used, the quantity of metal powder produced, the quantity of imported antimony appearing therein, and the quantity of "flying waste" resulting. An abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported antimony appearing in the exported metal powder, with an addition to compensate for "flying waste" incurred in manufacture, as shown by the abstract from the manufacturing record.

Drawback may be allowed under these regulations on metal powder exported on or after July 8, 1916.

Respectfully,
(105560.)
COLLECTOR OF CUSTOMS, *New York.*

ANDREW J. PETERS,
*Assistant Secretary.*

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(T. D. 36730.)

*Drawback on cigarettes.*

Drawback on cigarettes manufactured by E. A. Condax & Co., of New York, N. Y., with the use of imported leaf tobacco.

TREASURY DEPARTMENT, *October 16, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on cigarettes manufactured by E. A. Condax & Co., of New York, N. Y., with the use of imported leaf tobacco.

The allowance shall not exceed the quantity of imported tobacco appearing in the exported cigarettes, as shown by the sworn statement of the manufacturers, dated September 19, 1916, which is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on cigarettes exported on and after August 10, 1916.

Supplemental sworn schedules covering other brands of cigarettes or showing changes in the quantity of imported tobacco used may be filed, and upon verification of such schedules drawback may be allowed on cigarettes manufactured in accordance therewith.

Respectfully, ANDREW J. PETERS,
(99655-9.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36731—G. A. 7972.)

*Retouched painting not original.*

A painting which has been so retouched as to extinguish all the characteristic lines of the original constitutes a new and different painting from the original, and is therefore not free of duty under the provision in paragraph 652, tariff act of 1913, for "original paintings in oil," but is dutiable under paragraph 376, providing for "works of art, including paintings in oil."

United States General Appraisers, New York, October 11, 1916.

In the matter of protest 783475 of Louis Ralston against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

*John Giblon Duffy* for the importer.

*Bert Hanson*, Assistant Attorney General (*Robert Hardison*, special attorney), for the United States.

Before Board 3 (WAITE and HAY, General Appraisers).

WAITE, *General Appraiser:* The article in question in this case is invoiced as "one painting, portrait of lady, 30 by 25, £100." It was

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assessed at 15 per cent ad valorem under the provision in paragraph 376, tariff act of 1913, for "works of art, including paintings in oil." The importer claims it is free of duty under paragraph 652, 653, 654, 655, or 656. He also makes claim for 5 per cent reduction of duty under subsection 7 of paragraph J of section 4 of the act of 1913. No testimony, however, was offered under this head when the case was submitted, hence the claim is overruled.

With reference to the claims under the various paragraphs above enumerated, we do not think there is any evidence in the record which would warrant admission under paragraph 653, 654, or 655. As to the claim under paragraph 656, it appears that the regulation of the Secretary of the Treasury was not complied with, in that the affidavit of the owner, showing the painting to have been produced more than 100 years prior to importation, was not filed. Claims under these paragraphs are therefore overruled.

That leaves to be considered only the claim under paragraph 652, providing for "original paintings in oil, mineral, water, or other colors." Considerable testimony was taken in this case. Various experts, artists, and others were sworn and gave their opinions with reference to the antiquity and originality of the painting. We have to decide, however, from the testimony and a view of the painting, which was produced at the hearing, whether it is an original painting or not. It is a painting in oil of a woman, showing the head and bust of the figure. It was conceded that the painting had been retouched and painted over in such a way as practically to conceal the original painting. It was claimed, however, that this could be removed, showing the work of the first artist. Volume II of a work entitled "English Portrait Painters," by Spielman, was produced at the hearing, in which was exhibited a picture evidently taken from a photograph of the original of the painting in question. It is the claim of the importer that the painting, when in its original condition, was the original work of a known English portrait painter, Chandler, and was painted during the latter part of the eighteenth century. For some unknown and inconceivable reason, however, if it was the work of this artist, almost the entire face has been painted over, but enough marks and features of the original painting have been left from which it could be reasonably concluded, we think, that it was, before being retouched, the same picture which was reproduced in the work by Spielman. We are satisfied, however, that even if it be admitted that the groundwork of the picture before us is an original painting by Chandler, painted over 100 years ago, it could not, in its present condition, be considered such, because it is so completely and entirely changed in the general lines going to make up the features and the whole surface of the picture which tend to give it a character and distinguish it from other pictures of similar design and size. We are

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therefore of the opinion that it can not be said to be an original painting.

The protest is overruled in all respects and the assessment made by the collector affirmed.

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(T. D. 36732—G. A. 7973.)

*Lap robes—Auto rugs—Blankets.*

Certain lap robes and automobile rugs, which the testimony of the merchants in the trade shows would not be included within the trade term "blankets," are properly classified as manufactures of wool under paragraph 378, act of 1909 (by virtue of paragraph 310, act of 1913), or under paragraph 288, act of 1913, and not as blankets under paragraph 379, act of 1909, or paragraph 289, act of 1913.

United States General Appraisers, New York, October 13, 1916.

In the matter of protests 743984, etc., of Oscar Hofmann *et al.* against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

*Strauss & Hedges* (*John F. Strauss* and *Jacob L. Klingaman* of counsel) for the importers.

*Bert Hanson*, Assistant Attorney General (*Charles D. Lawrence* and *Leland N. Wood*, special attorneys), for the United States.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers).

Brown, *General Appraiser:* This suit is brought to determine the correct classification for dutiable purposes of certain wool lap robes or automobile rugs.

The Government contends that the goods were properly classified as manufactures of wool, under paragraph 378, act of 1909, at 44 cents per pound and 55 per cent ad valorem, by virtue of paragraph 310, act of 1913 (as to importations made between October 3, 1913, and January 1, 1914), and under paragraph 288, act of 1913, at 35 per cent (as to later importations covered by these protests).

The protestants claim that the merchandise is properly dutiable as "blankets" under paragraph 379, act of 1909 (by virtue of paragraph 310 of the act of 1913), and under paragraph 289, act of 1913.

In Abstract 36913 (T. D. 34933) we held upon the meager record there before us that the merchandise here at issue was a blanket and should be classified as such under paragraph 379, act of 1909. The examiner had testified that it first came in in the form of bed blankets and he had passed it as such, but subsequently the same material came in with the border, which the sample shows, and rounded at the corners, which he considered an automobile robe and therefore no longer to be classified as a blanket.

We held on that record, and considering only the common meaning of the term "blanket," that as it was concededly blanket material,



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its change of use for a covering to protect from the cold in an automobile, instead of on a bed, would not make it cease to be a blanket or change its classification, and sustained the protest.

In the case at bar, the Government has made a new record, introducing 11 trade witnesses, manufacturers selling various forms of blankets throughout the United States and salesmen of similar experience. They all testified that the articles in question were not known as blankets in the trade, but were excluded from that designation.

We have carefully reviewed the testimony comprising this voluminous record, and, taking it as a whole, must conclude that it is definitely, uniformly, and generally understood in the trade that the commercial designation "blankets" does not include these so-called lap robes or automobile robes.

Finding that the articles are not blankets within the meaning of that term as used by Congress in the paragraphs above referred to, we hold them dutiable under the provisions for manufactures of wool, as classified by the collector.

Protests overruled.

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## *Abstracts of decisions of the Board of General Appraisers.*

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*Board 1*—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

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### Before Board 1, October 9, 1916.

**No. 40254.**—Protest 802539 of Geo. S. Bush & Co. (Seattle).

Furniture.—Furniture classified at 25 per cent ad valorem under paragraph 368, tariff act of 1913, is claimed dutiable as manufactures of wood at 15 per cent under paragraph 176.

Opinion by McClelland, G. A. On the authority of Abstract 39130 the furniture in question was held dutiable under paragraph 176.

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### Before Board 2, October 9, 1916.

**No. 40255.**—Protests 781359, etc., of Wilfred Schade & Co. et al. (St. Louis and New York).

Lanterns—Parasols.—Japanese lanterns and parasols, composed of paper, wood, and other materials, classified as in chief value of paper at 25 per cent ad valorem under paragraph 332, tariff act of 1913, are claimed dutiable as manufactures of wood at 15 per cent under paragraph 176.

Opinion by Fischer, G. A. On the authority of Abstract 39867 the lanterns and parasols in question were held dutiable under paragraph 176. Protest held invalid in so far as it relates to the reliquidation of one of the entries. Abstract 32979 (T. D. 33594) followed.

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**No. 40256.**—Protests 777533, etc., of China-America Importing Co. (New York), and protests 788620, etc., of Frank P. Dow Co. et al. (Seattle and New York).

LANTERNS—PARASOLS.—These protests are against the classification of lanterns and parasols composed of paper, wood, and other materials as manufactures in chief value of paper at 25 per cent under paragraph 332.

Opinions by FISCHER, G. A. Certain of the articles in question were found to be manufactures in chief value of wood and held dutiable under paragraph 176.

**No. 40257.**—Protest 800937 of Robert Reiner Importing Co. (New York).

PAPER-PUNCHING MACHINES—EMBROIDERY MACHINES.—Paper-punching and cutting machines classified as embroidery machines at 25 per cent ad valorem under paragraph 165, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by FISCHER, G. A. The machines in question were found to be similar to those passed upon in G. A. 7951 (T. D. 36612). They were held dutiable under paragraph 167, as claimed.

**No. 40258.**—Protests 704520, etc., of Wm. H. Stiner & Son et al. (New York).

SILK HAIR NETS.—The question here is whether certain silk hair nets were made on the Lever or Gothrough machine. They were classified at 70 per cent ad valorem under paragraph 350, tariff act of 1909, and are claimed dutiable at 60 per cent under paragraph 402.

Opinion by HOWELL, G. A. It was found that certain of the hair nets in question were made on a machine other than the Lever or Gothrough machine. They were held dutiable under paragraph 402, as claimed. United States *v.* Mills (5 Ct. Cust. Appls., 534; T. D. 35178) followed.

**No. 40259.**—Protests 760884, etc., of Sherman & Sons Co. (New York).

COTTON QUILTS.—Cotton quilts classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913, are claimed dutiable at 25 per cent under paragraph 264.

Opinion by COOPER, G. A. On the authority of Abstract 36788 (T. D. 34871) the quilts in question were held dutiable under paragraph 264.

**No. 40260.**—Protests 762591, etc., of W. W. Thomas & Co. et al., and protest 776711 of Sherman & Sons Co. (New York).

FIGURED COTTON CLOTH.—Certain cotton cloth classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913, is claimed dutiable under paragraph 252.

Opinions by COOPER, G. A. The merchandise in question was held dutiable as woven figured cotton cloth under paragraph 252. G. A. 7618 (T. D. 34858), affirmed in United States *v.* Sherman (6 Ct. Cust. Appls., 271; T. D. 35501), followed.

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BEFORE BOARD 1, OCTOBER 11, 1916.

**No. 40261.**—Protest 765761 of Dr. Louis B. Bishop (New York).

MAIL ENTRY—PROTEST INSUFFICIENT.

MCCLELLAND, *General Appraiser:* This protest is against the assessment of duty on bird skins imported through the mails. The so-called mail entry, under the caption "Quantity and description of merchandise," contains the following: "Mfg. feathers par. 347. Stuffed birds, suitable for scientific instruction. Note importer's certificate attached." The following is a copy of the certificate referred to:

I, Dr. Louis B. Bishop, of 356 Orange Street, New Haven, Conn., do hereby certify that the stuffed wild birds described in the annexed mail entry, No.

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214188, are intended to be used and will be used solely for scientific and educational purposes, as set forth in my letter of April 17, 1914, addressed to the collector of customs at the port of New York.

LOUIS B. BISHOP.

The collector assessed duty at the rate of 60 per cent ad valorem under paragraph 347 of the tariff act of 1913. The grounds of objection to the payment of duty assessed by the collector are set forth in the protest as follows:

I hereby pay under protest a 60 per cent duty on a package of scientific bird skins, shipment No. 214188.

I protest on the grounds that even the lowest grade of common honesty demands that the Treasury Department, having given me a ruling in January that I could import on payment of 20 per cent, should not increase this duty to 60 per cent on birds which I had already ordered, without having in any way given me notice of this change in ruling.

Government counsel moves to dismiss the protest on the ground that it is insufficient, which is the equivalent of saying that it does not distinctly and specifically set forth the grounds of objection to the collector's classification as required by paragraph N of section 3 of the tariff act of 1913.

Following the ruling of the Court of Customs Appeals in United States *v.* General Electric Co. (4 Ct. Cust. Appls., 287; T. D. 33494) the board held in G. A. 7960 (T. D. 36686) that a protest would lie against the assessment of duty on merchandise imported through the mails without regard to whether or not a regular entry was made at a customhouse as required by the administrative features of the tariff act, and accordingly it follows that the right of protest exists in this case; but inasmuch as the protest fails to name either the paragraph of the tariff act under which duty was assessed, or the paragraph under which the merchandise should have been classified and the 20 per cent rate of duty named should have been levied, it is clearly defective, and the motion of the Government that it be dismissed must be granted. G. A. 6360 (T. D. 27328); G. A. 6361 (T. D. 27329); Lichtenstein *v.* United States and Zimmerman *v.* United States (1 Ct. Cust. Appls., 79; T. D. 31105).

The decision of the collector is affirmed.

DISSENTING OPINION.

BROWN, *General Appraiser:* I think the protest is sufficient in this case because it claims the right rate of duty (20 per cent) to properly raise the issue, and accurately describes the goods.

I think, therefore, that the case should not have been dismissed but determined on its merits.

**No. 40262.**—Protest 784757 of Knauth, Nachod & Kuhne (New York).

CELLULOID BOOKLETS.—Booklets classified as manufactures of celluloid at 40 per cent ad valorem under paragraph 25, tariff act of 1913, are claimed dutiable at 10 cents a pound under paragraph 325, or at 15 per cent under paragraph 329.

Opinion by SULLIVAN, G. A. Upon stipulation of counsel that the printed booklets in question are composed in chief value of celluloid, they were held dutiable under the provision for books of all kinds and printed matter in paragraph 329, as claimed. G. A. 7917 (T. D. 36484) followed.

**No. 40263.**—Protest 691492 of Simpson-Crawford Co. (New York).

GLASS AIGRETTES.—Glass aigrettes, classified at 60 per cent ad valorem under paragraph 438, tariff act of 1909, are claimed dutiable at 45 per cent under paragraph 109.

Opinion by SULLIVAN, G. A. On the authority of Judkins *v.* United States (6 Ct. Cust. Appls., 112; T. D. 35385) glass aigrettes were held dutiable under paragraph 109.

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**No. 40264.**—Protests 773837, etc., of Geo. Borgfeldt & Co., and protests 760088, etc., of F. W. Woolworth Co. (New York and New Orleans).

STEM WARE.—Glass stem ware, classified as blown glass at 45 per cent ad valorem under paragraph 84, tariff act of 1913, is claimed dutiable as a manufacture of glass at 30 per cent under paragraph 95.

Opinions by SULLIVAN, G. A. United States *v.* Fondeville (7 Ct. Cust. Appls., —; T. D. 36457) followed as to glass stem ware. Protests sustained in part.

**No. 40265.**—Protests 759830, etc., of Britt, Loeffler & Weil et al. (New York).

MALT EXTRACT.—Malt extract, malt soup stock, food maltose, and coagulen, classified as medicinal preparations at 20 per cent ad valorem under paragraph 17, tariff act of 1913, are claimed dutiable as nonenumerated manufactured articles at 15 per cent under paragraph 385, or as coal-tar products under paragraph 21.

Opinion by BROWN, G. A. Protests unsupported; overruled. Britt *v.* United States (7 Ct. Cust. Appls., —; T. D. 36428) cited.

**No. 40266.**—Protests 751658, etc., of L. Bachmann & Co. (New York).

WOOL CLOTH.—Fabrics classified as cloth wholly or in chief value of wool at 35 per cent ad valorem under paragraph 288, tariff act of 1913, are claimed to be composed chiefly of cotton, dutiable at 30 per cent under paragraph 266.

Opinion by BROWN, G. A. Protests unsupported; overruled.

**No. 40267.**—Protest 252074 of A. Klipstein & Co. (New York).

CHROME ALUM.—Merchandise shown by the appraiser's report to consist of chrome alum, classified as a chemical salt at 25 per cent ad valorem under paragraph 3, tariff act of 1897, is claimed free of duty as an article used in dyeing or tanning under paragraph 482.

Opinion by BROWN, G. A. On the authority of Kuttroff *v.* United States (169 Fed., 283; T. D. 29701) protest overruled.

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BEFORE BOARD 2, OCTOBER 11, 1916.

**No. 40268.**—Protest 800669 of Strohmeyer & Arpe Co. (New York).

SHOE KNIVES WITHOUT HANDLES.

FISCHER, *General Appraiser:* As shown by the sample in evidence herein, the shoe knives in question are composed of flat pieces of steel about 8¼ inches long, three-fourths of an inch wide, and one-sixteenth of an inch thick, one end of which is polished, slightly bent, with one side sharpened to a keen cutting edge curving upward to a sharp point. This cutting part occupies 3 inches of the knife. Duty was levied upon the articles at the rate of 30 per cent ad valorem under the provision in paragraph 130 of the act of 1913 for "shoe knives, * * * finished or unfinished, * * * with handles," and they are claimed to be properly dutiable at but 25 per cent ad valorem under the provision in said paragraph for "shoe knives, * * * finished or unfinished, without handles."

We agree with the contention of the importers. The articles are conceded to be finished shoe knives, made expressly for cutting and shaping the soles of shoes. They are known and recognized in the trade and commerce of this country as shoe knives without handles. This latter fact we believe is fairly established by the proof as well as by illustrative Exhibit A herein, which latter contains pictorial cuts showing various types of shoe knives, some of which are made with and some without handles, the knives in question belonging to the latter category.

It is true that these knives are sold to shoemakers precisely in the condition in which they are imported, but it is also shown that it would prove injurious

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to the hand to attempt to use them as shoe knives without first protecting the hand by covering that part of the knife which is gripped by the hand with some improvised handle or hand guard of leather, wood, or other material.

In this respect the present merchandise differs from the one-piece table knives and forks of aluminum which this board, in Abstract 38611, held were properly classifiable as knives and forks with handles. There the handles were capable of being used as such; here some additional protection for the hands is required before the so-called handle can be used in the actual process of cutting.

We are convinced from the evidence and from an examination of the representative sample that the articles in question are shoe knives which are finished without handles.

The protest is therefore sustained and the decision of the collector is reversed.

**No. 40269.**—Protest 802409 of Karl Neuhoff (New York).

COTTON BINDINGS—TRIMMINGS.—Merchandise returned by the appraiser as trimmings and classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, is claimed dutiable as cotton bindings at 25 per cent under paragraph 262.

Opinion by HOWELL, G. A. On the authority of Massce *v.* United States (3 Ct. Cust. Appls., 470; T. D. 33042), the merchandise in question was held properly dutiable as cotton bindings under paragraph 262.

**No. 40270.**—Protests 800847, etc., of H. Bendel et al. (New York).

BEADED WEARING APPAREL.—Articles of wearing apparel returned by the appraiser as embroidered, appliquéd, or made in part of lace, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable at 50 per cent under paragraph 317.

Opinion by HOWELL, G. A. The articles of wearing apparel in question were found to be composed in chief value of silk not appliquéd. They were held dutiable under paragraph 317. Loewenthal *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464) followed.

**No. 40271.**—Protests 781680, etc., of Joseph (New York).

BEADED HANDBAGS.—Handbags classified as made in part of silk ornaments or appliquéd with beads, at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable under paragraph 318 or 333.

Opinion by HOWELL, G. A. One item of the merchandise in question was found to consist of a handbag composed in chief value of silk ornamented with beads sewed or appliquéd to the article by means of a thread. This was held not to constitute an appliqué. Loewenthal *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464) followed. Protests sustained in part.

**No. 40272.**—Protests 774763, etc., of Thomson & Gouze (New York).

SILK MOURNING CRAPES.—Silk mourning crapes classified as silk veilings or trimmings at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as woven silk fabrics in the piece at 45 per cent under paragraph 318.

Opinion by HOWELL, G. A. Auffmordt *v.* United States (7 Ct. Cust. Appls., —; T. D. 36320) followed holding silk mourning crapes dutiable under paragraph 318.

**No. 40273.**—Protest 753759-51335 of Marshall Field & Co. (Chicago).

EMBROIDERED HANDKERCHIEFS.—Embroidered linen handkerchiefs classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable under paragraph 282 or 255.

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Opinion by COOPER, G. A. On the authority of G. A. 7768 (T. D. 35654), affirmed in Field *v.* United States (7 Ct. Cust. Appls., —; T. D. 36260), the handkerchiefs in question were held properly classified under paragraph 358.

**No. 40274.**—Protests 400988, etc., of Swayne, Hoyt & Co. et al. (San Francisco).

DRAWNWORK HANDKERCHIEFS.—Handkerchiefs with drawn threads classified at 60 per cent ad valorem under paragraph 349, tariff act of 1909, are claimed dutiable under paragraph 322 or 356.

Opinion by COOPER, G. A. Handkerchiefs decorated with plain drawnwork were held dutiable at 55 per cent under paragraphs 322 and 356. Abstract 36830 (T. D. 34889) followed.

**No. 40275.**—Protests 760164, etc., of Arthur Walker & Co. (New York).

FIGURED COTTON CLOTH.—Cotton cloth classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913, is claimed dutiable under paragraph 252.

Opinion by COOPER, G. A. G. A. 7618 (T. D. 34858), affirmed in United States *v.* Sherman (6 Ct. Cust. Appls., 271; T. D. 35501), followed as to figured cotton cloth. Protests sustained in part.

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BEFORE BOARD 3, OCTOBER 11, 1916.

**No. 40276.**—Protest 803591 of D. C. Alatary (New York).

ORIENTAL RUG—HOUSEHOLD EFFECTS.—An Oriental rug classified under paragraph 300, tariff act of 1913, is claimed free of duty as household effects under paragraph 428.

Opinion by HAY, G. A. It was found that the rug in question had been used abroad two or three years by the protestant. It was held free of duty under paragraph 428.

**No. 40277.**—Protest 798293 of J. J. Drill (Portland, Oreg.).

PERSONAL EFFECTS.—A claim is made here under paragraph 642, tariff act of 1913, for an exemption from duty of $100 in value of certain personal and household effects acquired by a resident of the United States and in his possession at the time of his departure from a foreign country.

Opinion by HAY, G. A. Protest sustained.

**No. 40278.**—Protest 791244-57622 of W. K. Jahn Co. (Chicago).

CLERICAL ERROR.—It is claimed that certain powdered gelatin was entered at a higher value than the actual cost thereof by reason of a clerical error.

Opinion by HAY, G. A. A clerical error was not manifest in this case. Protest overruled.

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## (T. D. 36733.)

### *Drawback on codeine.*

T. D. 35888 of November 16, 1915, amended as to method of liquidation in the case of synthetic products.

TREASURY DEPARTMENT, *October 16, 1916.*

SIR: That part of the department's regulations of November 16, 1915 (T. D. 35888), providing for drawback on morphine and codeine alkaloids and salts manufactured by the Powers-Weightman-Rosengarten Co., of Philadelphia, Pa., relating to synthetic

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preparations manufactured from direct morphine are hereby amended to read as follows:

A manufacturing record shall be kept covering synthetic preparations manufactured from direct morphine, which records shall be kept in the following form:

| Kind of direct alkaloid or salt used. | Quantity used (ounces). | No. of certificate of manufacture. | Synthetic alkaloid or salt produced. | Quantity produced (ounces). | Equivalent quantity of basic unit (ounces). | Quantity impure morphine alkaloid resulting (ounces). | Loss in manufacture (per cent). |
|---|---|---|---|---|---|---|---|
| | | | | | | | |

An abstract from such record and certificate of manufacture shall be filed with the drawback entry.

The quantity of direct morphine alkaloid or salts which may be taken as a basis for the allowance of drawback on the synthetic products thereof may equal the quantity used, less a quantity of such alkaloid or salts equivalent to the morphine alkaloid content of the impure morphine alkaloid resulting from the synthetic process, the drawback on the net quantity of direct morphine alkaloid or salts used to be distributed between the several synthetic codeine products according to their morphine alkaloid content.

*Example of liquidation.*

| | Ounces. |
|---|---|
| Direct morphine alkaloid used | 287.00 |
| Impure morphine alkaloid resulting, 61 ounces testing .93 per cent, 61×.93 | 56.73 |
| Net quantity alkaloid used, 287—56.73 | 230.27 |

*Synthetic products.*

Codeine alkaloid 170 ounces, containing 162.49 ounces morphine alkaloid.
Codeine phosphate 80 ounces, containing 20.99 ounces morphine alkaloid.
Codeine sulphate 40 ounces, containing 30.84 ounces morphine alkaloid.
Total products 240 ounces, containing 214.32 ounces morphine alkaloid.
Total morphine alkaloid content of products, 214.32 ounces.
Codeine alkaloid 162.49 ounces, equal to 75.818 per cent.
Codeine phosphate 20.99 ounces, equal to 9.793 per cent.
Codeine sulphate 30.84 ounces, equal to 14.387 per cent.

*Distribution.*

| | Ounces. |
|---|---|
| Morphine alkaloid used, 287—56.75 | 230.27 |
| Rate of drawback on morphine alkaloid used | 1.50 |

Total drawback to be distributed, 230.27×1.50=$345.40.
Codeine alkaloid $\frac{162.49}{214.32}$ or 75.818 per cent of $345.40=$261.88.
Codeine phosphate $\frac{20.99}{214.32}$ or 9.793 per cent of $345.40=$33.82.
Codeine phosphate $\frac{30.84}{214.32}$ or 14.387 per cent of $345.40=$49.69.

Respectfully,
(102387.)

ANDREW J. PETERS,
*Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

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(T. D. 36734.)

*Linoleum for building or repair of vessels.*

Appeal directed from decision of the Board of United States General Appraisers of September 12, 1916 (Abstract 40117), involving the classification of certain linoleum for vessels.

TREASURY DEPARTMENT, *October 19, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 29th ultimo, relative to the decision of the Board of United States General Appraisers of September 12, 1916, Abstract 40117, wherein certain linoleum which had been assessed with duty was held by the board to have been used in the repair of vessels and to be entitled to free entry under subsection 6 of paragraph J of section 4 of the tariff act of October 3, 1913.

You are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(93000-12-1.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

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(T. D. 36735.)

*Drawback on flour.*

T. D. 35936 of December 1, 1915, extended to cover the manufacture by the A. C. Bedell Co., of New York, N. Y., for the account of Edward M. Raphel & Co. (Inc.), of New York, N. Y., of flour in whole or in part with the use of domestic flour and imported flour.

TREASURY DEPARTMENT, *October 20, 1916.*

SIR: The department's regulations of December 1, 1915 (T. D. 35936), providing for the payment of drawback on flour manufactured by the Washburn-Crosby Co. with the use of domestic flour and imported flour, are hereby extended to cover blended flour manufactured by the A. C. Bedell Co., of New York, N. Y., for the account of Edward M. Raphel & Co. (Inc.), of New York, N. Y., with the use of domestic flour and imported flour.

The sworn statements of the companies named, dated September 21, 1916, are transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(105383.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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## (T. D. 36736.)

### *Disinfection of hides.*

T. D. 30583 (Circular 23) of May 2, 1910, amended by permitting the importation of abattoir hides from Uruguay under certain conditions.

TREASURY DEPARTMENT, *October 23, 1916.*

*To collectors and other officers of the customs:*

In accordance with a request from the Secretary of Agriculture, you are informed that abattoir hides the product of Uruguay may be imported without disinfection when accompanied by a certificate of an official veterinarian of the Uruguayan Government showing that the same were taken from cattle free from disease at the time of slaughter.

T. D. 30583 (Circular 23) of May 2, 1910, is amended accordingly.

(74465.) ANDREW J. PETERS, *Assistant Secretary.*

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## (T. D. 36737.)

### *Drawback on clothing.*

Drawback on men's clothing manufactured by the Alfred Benjamin-Washington Co. (Inc.), of New York, N. Y., with the use of imported linen piece goods.

TREASURY DEPARTMENT, *October 23, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on men's clothing manufactured by the Alfred Benjamin-Washington Co. (Inc.), of New York, N. Y., with the use of imported linen piece goods.

A manufacturing record shall be kept, showing, in the case of each lot of men's clothing manufactured for exportation with the benefit of drawback, the lot number and date of manufacture thereof, the number of pieces of clothing of each size and style produced, the quantity, identity, and value of imported linen piece goods used in the manufacture thereof, the quantity of such piece goods appearing in the finished garments, and the quantity and value of the waste resulting, if any. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance may equal the quantity of imported linen piece goods used in the manufacture of the exported clothing, less the quantity which the value of the waste will replace, as shown by the abstract from the manufacturing record.

The sworn statement of the manufacturers, dated October 13, 1916, is transmitted herewith.

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Drawback may be allowed under these regulations on men's clothing exported on or after August 15, 1916.

Respectfully, ANDREW J. PETERS,
(100802-6.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36738.)

*Drawback on oiled clothing.*

Drawback on oiled clothing manufactured by the Standard Oiled Clothing Co., of New York, N. Y., with the use of various imported materials.

TREASURY DEPARTMENT, *October 23, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on oiled clothing manufactured by the Standard Oiled Clothing Co., of New York, N. Y., with the use of imported raw umber, gum sanderack and cobalt resoleate, and linseed oil produced from imported linseed.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated September 12, 1916, which will show, in the case of each lot of oiled clothing manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the number of articles of clothing of each size, color, and style produced, and the net quantity and identity of imported material of each kind used in the manufacture thereof. An abstract from such manufacturing record shall be filed with the drawback entry.

The quantities of imported materials and linseed oil which may be taken as a basis for the allowance of drawback shall not exceed the quantities used in the manufacture of the exported articles, as shown by the abstract from the manufacturing record.

Drawback may be allowed under these regulations on the articles covered thereby exported on or after December 16, 1915.

Respectfully, ANDREW J. PETERS,
(104507.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36739.)

*Drawback on chains.*

Drawback on chains manufactured by the Standard Chain Co., of York, Pa., with the use of imported stop-pin forgings.

TREASURY DEPARTMENT, *October 23, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations

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(chapter 18 of the Customs Regulations of 1915) on chains manufactured by the Standard Chain Co., of York, Pa., with the use of imported stop-pin forgings.

The allowance shall not exceed one imported stop-pin forging for each chain manufactured and exported.

The sworn statement of the manufacturers, dated October 13, 1916, is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on chains exported on or after September 19, 1916.

Respectfully, ANDREW J. PETERS,
(105510.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Buffalo, N. Y.*

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(T. D. 36740.)

*Drawback on watches.*

Drawback on watches manufactured by Byron L. Strasburger & Co. and Lugerman & Morrison (Inc.), of New York, N. Y., with the use of imported watch movements for the account of S. Lipschitz & Co., of New York, N. Y., and others.

TREASURY DEPARTMENT, *October 23, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on watches manufactured by Byron L. Strasburger & Co. and Lugerman & Morrison (Inc.), both of New York, N. Y., with the use of imported watch movements, for the account of S. Lipschitz & Co., of New York, N. Y., and others.

Records shall be kept by the manufacturers and exporters, which will serve to establish, in the case of each lot of watches exported with benefit of drawback, the kind and dutiable value of the imported watch movements appearing therein, as well as the particulars of importation of the same, and such data shall be shown in the drawback entry.

In liquidation, the allowance shall not exceed one imported watch movement for each watch exported.

The sworn statements of Byron L. Strasburger & Co., S. Lipschitz & Co., and Lugerman & Morrison (Inc.), dated October 3, 13, and 17, respectively, are transmitted herewith.

Drawback may be allowed under these regulations on watches manufactured by Byron L. Strasburger & Co. on or after October 3, 1916, and on watches manufactured by Lugerman & Morrison (Inc.) on or after October 17, 1916.

Respectfully, ANDREW J. PETERS,
(103793-2.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36741.)

*Drawback on alcohol.*

**Drawback on alcohol manufactured by the Columbus Distilling Co., of New York, N. Y., with the use of wholly imported molasses.—T. D. 24441 of May 26, 1903, revoked.**

TREASURY DEPARTMENT, *October 23, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on alcohol manufactured by the Columbus Distilling Co., of Brooklyn, N. Y., with the use of wholly imported molasses.

A manufacturing record shall be kept in the manner prescribed in the sworn statement of the manufacturers, dated October 2, 1916, transmitted herewith, and at the end of each monthly period of manufacture there shall be filed a certificate of manufacture and abstract from such manufacturing record showing for the period the quantity, value, and identity of the imported molasses used, the quantities and values of alcohol and fusel oil obtained, and the quantity and value of waste resulting.

The quantity of imported material which may be taken as a basis for the allowance of drawback may equal the quantity used in the manufacture of the exported alcohol, less the quantity which the value of the waste will replace, the duties paid on such quantity of imported material to be distributed between the principal product (alcohol) and the by-product (fusel oil) according to their relative values; provided that the drawback distributed to the fusel oil shall not exceed the maximum allowance on by-products prescribed by the drawback law, as interpreted by T. D. 33809 of October 25, 1913.

T. D. 24441 of May 26, 1903, is hereby revoked.

Respectfully, ANDREW J. PETERS,
(105410-2.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36742.)

*Drawback on toilet preparations.*

**Drawback on toilet preparations manufactured by Solon Palmer, of New York, N. Y., with the use of domestic tax-paid alcohol.—T. D. 30581 of April 29, 1910, revoked.**

TREASURY DEPARTMENT, *October 24, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on perfumery, toilet

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waters, and Florida water manufactured by Solon Palmer, of New York, N. Y., with the use of domestic tax-paid alcohol.

The allowance shall not exceed the quantity of domestic tax-paid alcohol appearing in the perfumery, toilet waters, and Florida water exported, as shown by the sworn statement of the manufacturer, dated September 1, 1916, which is transmitted herewith.

Supplemental sworn schedules covering toilet preparations manufactured with the use of domestic tax-paid alcohol may be filed, and upon verification of such schedules drawback may be allowed on the preparations covered thereby.

T. D. 30581 of April 29, 1910, is hereby revoked.

Respectfully, ANDREW J. PETERS,
(105501.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36743—G. A. 7974.)

*Cattle-hair robes—Cattle-hair cloth.*

An article consisting of two pieces of cattle-hair cloth sewn together and trimmed with braid is either directly, by similitude, or under the mixed-material clause properly classified under the provision for "cloths if made in chief value of cattle hair or horse hair, not specially provided for," in paragraph 288, act of 1913, at 25 per cent, and not as a manufacture of wool, by similitude, under said paragraph at 35 per cent, nor under the nonenumerated clause in paragraph 385.

United States General Appraisers, New York, October 18, 1916.

In the matter of protest 774992 of F. B. Vandegrift & Co. against the assessment of duty by the collector of customs at the port of Philadelphia.

[Reversed.]

*Peter Hackett* for the importers.

*Bert Hanson*, Assistant Attorney General (*Charles E. McNabb*, special attorney), for the United States.

Before Board 1 (MCCLELLAND, SULLIVAN, and BROWN, General Appraisers).

BROWN, *General Appraiser:* This suit is brought to determine whether the merchandise is properly dutiable under paragraph 288, act of 1913, at 35 per cent as a manufacture of wool, by virtue of the similitude clause in paragraph 386, or whether it is dutiable, directly or by similitude, at 25 per cent under the provision in said paragraph 288 for "cloths if made in chief value of cattle hair or horse hair, not specially provided for in this section." Claims are also made under paragraph 385 at 10 or 15 per cent as unenumerated articles.

The merchandise consists of carriage robes which the witness for the importers states are made of two pieces of cloth, composed of

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cattle hair, sewn together and trimmed with braid. It was originally returned and classified as articles made of wool pile fabrics at 40 per cent under paragraph 288, but the appraiser now states that the articles are not made of pile fabrics and are dutiable as manufactures of wool at 35 per cent, by virtue of the similitude clause in paragraph 386, for the reason that there is no provision for manufactures of cattle-hair cloth, and these articles are "no longer the cloth made in chief value of cattle hair provided for in paragraph 288."

Under the acts of 1897 and 1909, which contained no provision for cattle-hair goods, certain cattle-hair fabrics were classified as manufactures of wool, by similitude, for the reason that they were similar to certain fabrics of wool, particularly in *use*. Rosenstern *v.* United States (171 Fed., 71; T. D. 29825); Arthur *v.* Fox (108 U. S., 125). And in the case of Pittsburgh Plate Glass Co. *v.* United States (2 Ct. Cust. Appls., 389; T. D. 32162) certain cattle-hair felts used for polishing glass were held, by similitude of use alone, to be classifiable as wool felts.

Under the act of 1913 we held, in G. A. 7944 (T. D. 36587), that certain cattle-hair felt was not dutiable as wool felt, by similitude, but was properly dutiable as cloth in chief value of cattle hair, saying:

> In the act of 1913 Congress added a provision for cattle-hair cloth, inserting it, at a lower and different rate of duty, in the same paragraph which covers felts, not woven, and cloths wholly or in chief value of wool, plainly intending to separately classify cattle-hair goods, so far as the word "cloth" would accomplish that purpose.

Therefore, if the provision for cattle-hair cloth can reasonably be construed to include the merchandise in question, either directly or by similitude, it should be so classified.

To hold this article dutiable under the provision for cattle-hair cloth avoids the inconsistency which would otherwise result if an article made wholly or substantially of cattle-hair cloth (which is, in fact, really little more than cattle-hair cloth itself) were held dutiable as an unenumerated manufactured article. Thus the manufacture of cattle-hair cloth would pay 15 per cent and the cloth itself would pay 25 per cent. In our opinion the Congress could never have intended such a result.

It is so contrary to the usual plan of tariff legislation to tax a manufactured product at a less rate than the material from which it is made that every intendment must be taken as against such a construction, unless the express language of the act compels it.

Does the merchandise, then, fall directly within the meaning and scope of the provision for "cloth if made in chief value of cattle

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hair?" We think that it does—first, because the articles in question (being two pieces of cattle-hair cloth sewn together and trimmed with braid) may be properly denominated cattle-hair cloth, for the reason that it is almost wholly composed of that material; second, in the absence of any provision for manufactures of cattle-hair cloth there is no reason to draw any distinction between manufactures of a material and the material itself, as, by the new provision for cattle-hair cloth, it is manifest, in our opinion, that Congress intended to cover such cattle-hair goods as the articles in controversy, which are made of cloth and so slightly removed by manufacture from the cloth itself.

However, if the merchandise does not come directly within the meaning of the cattle-hair cloth provision, before resorting to the unenumerated paragraph, there being no other applicable provision, we must apply the similtude clause. There is no evidence of any similarity *in use* to any article of wool provided for in the tariff act, and it is plain that the article in controversy is similar in material, quality, and texture to cattle-hair cloth, and dissimilar in material, quality, and texture to wool. It must, therefore, be classified under the cattle-hair cloth provision, by virtue of the similitude clause, unless the provision is so limited as to exclude classification thereunder of all articles not within its literal terms. But such exclusion can not be assumed or implied from the mere descriptive or *eo nomine* language of this provision, and there is no express language or condition tantamount to the same. Nevin *v.* United States (5 Ct. Cust. Appls., 423; T. D. 34945).

In our opinion, then, the merchandise is dutiable under the provision for cattle-hair cloth, either directly or by virtue of the similitude clause.

Furthermore, even if the merchandise can not properly be held so dutiable, either directly or by similitude, before resorting to the provision for nonenumerated manufactured articles in paragraph 385, we must ascertain whether or not classification is governed by the provision in paragraph 386, reading:

> On articles not enumerated, manufactured of two or more materials, the duty shall be assessed at the highest rate at which the same would be chargeable if composed wholly of the component material thereof of chief value.

We think that this provision applies to the merchandise in question, because the article is composed principally of cattle-hair cloth (which is undoubtedly the material of chief value), and the thread (with which the two pieces of cloth are sewn together), and binding or trimming (which are apparently cotton).

The merchandise is therefore held to be dutiable at 25 per cent under paragraph 288, and judgment is rendered for the plaintiff, sustaining the claim in the protest at that rate.

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## *Abstracts of decisions of the Board of General Appraisers.*

*Board 1*—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

### Before Board 1, October 16, 1916.

**No. 40279.**—Protest 805055 of Lamont, Corliss & Co. (New York).

Vinolia Cream—Medicinal Preparation.—The appraiser reports that the merchandise consists of what is known as "Royal Vinolia Cream," possessing curative qualities, used as an application to the skin. It was classified as a toilet preparation at 60 per cent ad valorem under paragraph 48, tariff act of 1913, and is claimed dutiable as a medicinal preparation at 20 per cent under paragraph 17.

Opinion by McClelland, G. A. On the authority of G. A. 7912 (T. D. 36440) Vinolia Cream was held dutiable as a medicinal preparation under paragraph 17.

**No. 40280.**—Protest 804968 of Meyer Hecht (New York).

Goatskins.—The hair on goatskins classified at 15 per cent ad valorem under paragraph 305, tariff act of 1913, is claimed entitled to free entry under paragraph 603, 604, or 650.

Opinion by McClelland, G. A. Protest unsupported; overruled.

**No. 40281.**—Protest 804385 of F. Lang (New York).

Glove Leather.—Lambskins tanned but not dressed classified as glove leather at 10 per cent ad valorem under paragraph 359, tariff act of 1913, are claimed free of duty as leather not specially provided for under paragraph 530.

Opinion by McClelland, G. A. On the amended report of the appraiser the merchandise was held entitled to free entry under paragraph 530.

**No. 40282.**—Protest 804222 of M. Rice & Co. (Philadelphia).

Immortelles, Dyed.—Dyed immortelles classified at 60 per cent ad valorem under paragraph 347, tariff act of 1913, are claimed dutiable by similitude as preserved and cut flowers at 25 per cent under paragraph 210.

Opinion by McClelland, G. A. Upon stipulation of counsel the immortelles in question were held dutiable under paragraph 210. Bayersdorfer *v.* United States (7 Ct. Cust. Appls., —; T. D. 36390) followed.

### Before Board 3, October 16, 1916.

**No. 40283.**—Protest 786095 of Geo. Borgfeldt & Co. (New York).

Weight of Perfumery.

*Waite, General Appraiser:* The question here to be decided is the proper weight of an importation of perfumery contained in 25 cases of 12 tins each, invoiced as weighing 160 ounces to the tin. The contention of the importers is that the 160 ounces refers to liquid ounces and not to ounces by weight. The appraiser reports that the weight of the merchandise in the tins was not ascertained at the time of appraisement, and, as it was believed that the invoice weight represented avoirdupois ounces, it was so checked and assessed for duty accordingly under paragraph 16, tariff act of 1913, at the rate of 40 cents per pound and 20 per cent ad valorem.

Some testimony has been taken and a stipulation between counsel as to certain facts has been put in evidence. It appears from the record that the perfumery in question is contained in 300 tins, each tin containing 160 fluid ounces, making a total of 48,000 fluid ounces. The stipulation states that 1 fluid ounce



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of the extract weighs 375 grains avoirdupois. This would make a total of 18,000,000 grains, which, reduced to pounds on the basis of 7,000 grains to the avoirdupois pound (given by Heyl in Table of Weights), equals 2,571 pounds. This, we think, is the quantity upon which duty should have been assessed. We therefore sustain the protest and authorize reliquidation on the item in question upon this basis.

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BEFORE BOARD 1, OCTOBER 18, 1916.

**No. 40284.**—Protest 781019 of Butler Bros. (St. Louis).

WILLOW BASKETS—PINCUSHIONS.—Willow baskets classified at 25 per cent ad valorem under paragraph 175, tariff act of 1913, are claimed dutiable at 20 per cent under paragraph 368. Pincushions in the form of artificial fruit, classified at 60 per cent under paragraph 347, are claimed dutiable under paragraph 266 or 257.

Opinion by MCCLELLAND, G. A. Protest unsupported; overruled.

**No. 40285.**—Protest 802534 of B. R. Anderson Co. (Seattle).

SEA GRASS, TWISTED.—Merchandise invoiced as twisted sea grass, classified as manufactures of grass at 25 per cent ad valorem under paragraph 368, tariff act of 1913, is claimed free of duty under paragraph 552 or dutiable at 10 per cent under paragraph 372.

Opinion by MCCLELLAND, G. A. On the authority of Abstracts 39205 and 40119 the classification of sea grass, twisted, under paragraph 368 was affirmed.

**No. 40286.**—Protests 804278-59380, etc., of International Forwarding Co. et al. (Chicago).

WOOD SHAVINGS.—Wood shavings classified as manufactures of chip at 20 per cent ad valorem under paragraph 368, tariff act of 1913, are claimed dutiable at 15 per cent under paragraph 176, 385, or 335.

Opinion by MCCLELLAND, G. A. The wood shavings in question were held properly classified under paragraph 368. United States *v.* Kronfeld (7 Ct. Cust. Appls., —; T. D. 36425) followed.

**No. 40287.**—Protest 805338 of Morimura Bros. (Seattle).

HINOKI CHIP ROPE.—Merchandise classified as manufactures of chip at 20 per cent ad valorem under paragraph 368, tariff act of 1913, consisting of Hinoki chip rope, is claimed dutiable as manufactures of wood at 15 per cent under paragraph 176.

Opinion by MCCLELLAND, G. A. On the authority of United States *v.* Kronfeld (7 Ct. Cust. Appls., —; T. D. 36425) Hinoki chip was held properly classified under paragraph 368.

**No. 40288.**—Protests 783749, etc., of O. G. Hempstead & Son et al. (Philadelphia and New York).

PAPER HATS—HALLOWEEN FAVORS—TOYS.—The merchandise in question was classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, and is claimed dutiable at lower rates under various paragraphs.

Opinion by SULLIVAN, G. A. Hats, Turkish fezes, caps, turbans, mask hats, carnival slappers, garlands, clown hats, aprons, blow-outs, lanterns, horns, etc., used for New Year's Eve and Halloween celebrations, carnivals, or decorative purposes, by adults as well as children, made of tissue paper, crape paper, ordinary paper, or cardboard, and clappers or rattles in chief value of wood, were held dutiable according to the component material of chief value. Abstract 38875 followed. Indian hats and other paper hats intended for children only, toy horns, Christmas toys, cardboard and metal toys, Christmas trees

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manufactured from tissue paper for toy purposes for children, toy animals and arrows were held properly classified as toys under paragraph 342. Illfelder *v.* United States (1 Ct. Cust. Appls., 109; T. D. 31115) followed. Protests sustained in part.

**No. 40289.**—Protests 760516, etc., of Badische Co. et al. (New York).

COAL-TAR COLORS.—The question here is whether coal-tar colors are dutiable at 30 per cent ad valorem under paragraph 20, tariff act of 1913, or under the provision for "all color lakes" in paragraph 63 at 20 per cent.

Opinion by BROWN, G. A. On the authority of Farbwerke-Hoechst Co. *v.* United States (6 Ct. Cust. Appls., 483; T. D. 36121) the coal-tar colors were held properly classified under paragraph 20.

**No. 40290.**—Protest 797984 of Main Drug Co. (Seattle).

PATENT MEDICINES.—Merchandise invoiced as patent medicines, classified as medicinal preparations at 20 per cent ad valorem under paragraph 17, tariff act of 1913, is claimed free of duty as crude drugs under paragraph 477, or dutiable as drugs, advanced, at 10 per cent under paragraph 27.

Opinion by BROWN, G. A. It was found that the articles are either medicinal preparations or similar thereto. They were held properly classified under paragraph 17.

**No. 40291.**—Protests 784024, etc., of M. Furuya Co. (Seattle).

FISH, SKINNED OR BONED.—Kamaboko, or canned fish, classified as fish in tins at 15 per cent ad valorem under paragraph 216, tariff act of 1913, is claimed dutiable as fish, skinned or boned, at three-fourths of 1 cent per pound under the same paragraph.

Opinion by BROWN, G. A. On the authority of Tokstad-Burger Co. *v.* United States (6 Ct. Cust. Appls., 441; T. D. 35981), affirming G. A. 7720 (T. D. 35365), the fish in question was held properly classified under paragraph 216.

**No. 40292.**—Protests 769692, etc., of J. J. Gavin & Co. et al. (New York).

PILE FABRICS.—Merchandise classified as pile fabrics in chief value of mohair at 45 per cent ad valorem under paragraph 309, tariff act of 1913, is claimed dutiable as cloth in chief value of mohair at 40 per cent under paragraph 308.

Opinion by BROWN, G. A. Protests unsupported; overruled.

**No. 40293.**—Protests 762405, etc., of Massce & Co. (New York).

TEAZLED CLOTH—PILE FABRICS.—Teazled cloth classified as pile fabrics at 40 and 45 per cent ad valorem under paragraphs 288 and 308, respectively, tariff act of 1913, is claimed dutiable as wool cloth at 35 and 40 per cent under paragraphs 288 and 308.

Opinion by BROWN, G. A. The merchandise was found to be similar to that passed upon in G. A. 7906 (T. D. 36403), where it was held not included within the meaning of the term "pile fabrics." Protests sustained.

**No. 40294.**—Protest 802672 of F. T. Walsh (Boston).

MACHINE BLANKETS.—So-called "endless woolen blankets," classified as manufactures of wool at 35 per cent ad valorem under paragraph 288, tariff act of 1913, are claimed dutiable as blankets at 25 or 30 per cent under paragraph 289.

Opinion by BROWN, G. A. On the authority of G. A. 7919 (T. D. 36486) the articles were held properly classified as manufactures of wool under paragraph 288.

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**No. 40295.**—Protest 804198 of Wm. Anderson & Co. (New York).

FLANNELS.—The question here is whether the merchandise is dutiable as flannels of wool under paragraph 289, tariff act of 1913, or as wool dress goods under paragraph 290.

Opinion by BROWN, G. A. Upon stipulation of counsel the merchandise was held dutiable as flannels of wool under paragraph 289. Abstract 39393 followed.

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BEFORE BOARD 2, OCTOBER 18, 1916.

**No. 40296.**—Protest 95626f of Hoffman, Huber & Co. (New York).

ETAMINES—COMMERCIAL DESIGNATION.—Merchandise classified as etamines at 60 per cent ad valorem under paragraph 339, tariff act of 1897, is claimed dutiable as cotton cloth under paragraph 306 or 322.

Opinion by COOPER, G. A. The record in G. A. 6804 (T. D. 29259) was incorporated in this case and it was agreed that the number of threads per square inch in the cloth should be ascertained from the official sample. No testimony was submitted for the purpose of showing the commercial designation of the cloth in question, nor was any proof offered showing the merchandise to be identical with that held in G. A. 6804 to be dutiable as cotton cloth and not as etamines. Protest overruled. Krusi *v.* United States (1 Ct. Cust. Appls., 168; T. D. 31213) cited.

**No. 40297.**—Protests 777448, etc., of Dezell & Helwig (New York).

COTTON TOWELS—COTTON TABLE DAMASK.—The appraiser reports the merchandise in question to be huck, damask, and union towels, table damask in the piece, damask table cloths, napkins, table scarfs, and bureau scarfs, classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913. These articles are claimed dutiable under paragraph 263, 264, 252, or 253.

Opinion by COOPER, G. A. On the authority of G. A. 7609 (T. D. 34819) and G. A. 7630 (T. D. 34903) huck, union, and damask towels were held dutiable at 25 per cent under paragraph 264, and the table damask in the piece, damask table cloths and napkins at 25 per cent under paragraph 263. Protests overruled as to the bureau scarfs and table scarfs.

**No. 40298.**—Protests 773701-55755, etc., of Marshall Field & Co. (Chicago).

COTTON QUILTS—COTTON TABLE DAMASK—COTTON CLOTH.—Turkey red damask table covers, cotton quilts and figured cotton cloth, classified as Jacquard figured manufactures of cotton at 30 per cent under paragraph 258, tariff act of 1913, are claimed dutiable at 25 per cent under paragraphs 263 and 264 and at the appropriate rate under paragraph 252.

Opinion by COOPER, G. A. On the authority of G. A. 7780 (T. D. 35724) turkey red damask table covers were held dutiable under paragraph 263. Cotton quilts were held dutiable at 25 per cent under paragraph 264. G. A. 7748 (T. D. 35577) followed. Woven figured cotton cloth was held dutiable under paragraph 252. United States *v.* Sherman (6 Ct. Cust. Appls., 271; T. D. 35501) followed.

**No. 40299.**—Protests 769438, etc., of C. B. Richard & Co. et al. (New York).

TUCKED WEARING APPAREL.—Shirt bosoms and blouses composed of cotton, or flax and cotton, ornamented with loom woven or pleated tucks or embroidery, classified at 60 per cent ad valorem as articles made in whole or in part of tucking, under paragraph 368, tariff act of 1913, are claimed dutiable as cotton wearing apparel at 30 per cent under paragraph 256.

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Opinion by COOPER, G. A. On the authority of G. A. 7613 (T. D. 34823), affirmed in United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388), the tucked articles not embroidered were held dutiable at 30 per cent under paragraph 256.

**No. 40300.**—Protests 763500, etc., of Morimura Bros. et al. (New York).

DRAWNWORK HANDKERCHIEFS.—Drawnwork handkerchiefs classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable at 25 or 30 per cent under paragraph 255.

Opinion by COOPER, G. A. On the authority of G. A. 7769 (T. D. 35675) the handkerchiefs ornamented with drawnwork and containing no embroidery were held dutiable under paragraph 255.

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BEFORE BOARD 1, OCTOBER 20, 1916.

**No. 40301.**—Protests 787910, etc., of Knauth, Nachod & Kuhne (New York).

RUBBER ARTICLES—DRUGGISTS' SUNDRIES.

MCCLELLAND, *General Appraiser:* From the special reports of the appraiser on these protests it appears that the merchandise consists of syringes, syringe tubes, breast pumps, irrigator fittings, and combs. They were assessed with duty at the rate of 25 per cent ad valorem under paragraph 369 of the tariff act of 1913 as manufactures of hard rubber. Protestants claim that the merchandise is dutiable at one of the rates lower than that assessed provided for in paragraph 368, 369, 385, or 386 of said act.

From the trend of the testimony it is evident that the claim relied upon is that the merchandise should have been classified as manufactures of india rubber or gutta percha commonly known as "druggists' sundries," and assessed with duty at the rate of 15 per cent ad valorem under paragraph 368. But one witness testified in support of the protest, and the Government offered nothing in support of the collector's classification. The question thus presented is simply whether the testimony on behalf of protestants was sufficient to overcome the presumption of correctness which attaches to the collector's action. Some effort was made by counsel for protestants to show a commercial understanding of the term "druggists' sundries" which would include the articles under consideration.

Several queries here present themselves as to the meaning to be given to the words "commonly known," as used in this paragraph. (1) Are they to be given the same meaning as would be given to the words "commercially known?" (2) Are they to be construed as referring to such articles as are commonly understood by those engaged in the drug trade as being druggists' sundries, regardless of what is popularly termed "commercial designation?" Or (3) in the absence of proof that there is a commercial understanding of these words which differs from their meaning in common speech, or that the articles involved are commonly known by those engaged in the drug trade as druggists' sundries, are we to seek for their meaning in common speech? It can not be that the latter course was the congressional intent, for it is at once evident that to persons not engaged in the drug business, however apt as English scholars they may be, the words "druggists' sundries" would necessarily be of uncertain and purely speculative meaning.

We can conceive of little distinction between the proof necessary to establish a commercial meaning for these words and that necessary to show that the articles are *commonly* known as druggists' sundries.

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It is true that the courts have held that a commercial meaning to be effective must be uniform, definite, and general throughout the trade dealing in the merchandise involved, and different from the meaning which the words construed have in ordinary speech. Dodge *v.* Hedden (42 Fed., 447); Maddock *v.* Magone (152 U. S., 368); Berbecker *v.* Robertson (152 U. S., 373). But may it not also be said, referring to a particular class of merchandise which is commonly known by a given name or term, that the proof necessary to show that it is so known must come from persons experienced in the particular trade in which it is bought and sold, the distinction being that in such case it may be commercially and commonly known by the same name?

Protestants having failed to establish a commercial meaning for the term "druggists' sundries" which would include the articles under consideration, it follows that they have also failed to show that they are *commonly known* as such sundries. We think, however, that the record is insufficient upon which to base a conclusion that should form a guide for the future classification of similar merchandise, and the protests are therefore overruled, without affirming the classification of the collector.

**No. 40302.**—Protest 801001 of Kalt Lumber Co. (New York).

HARDWOOD FLOORING.—Merchandise reported by the appraiser to be hardwood flooring, planed, tongued, grooved, and bored, classified as manufactures of wood at 15 per cent ad valorem under paragraph 176, tariff act of 1913, is claimed free of duty as lumber under paragraph 647.

Opinion by MCCLELLAND, G. A. On the authority of Abstract 37717 the flooring in question was held properly classified under paragraph 176.

**No. 40303.**—Protest 799008-58835 of L. D. Anderson Jewelry Co. (Chicago).

SHELL NECKLACES—JEWELRY.—Necklaces composed of small colored conical-shaped seashells pierced and strung on cotton cord, the ends being knotted together without a clasp, classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable at lower rates under various paragraphs.

Opinion by SULLIVAN, G. A. It was found that the articles in question are called Tasmania shell chains and are worn around the neck for ornamentation or as fan chains. The evidence was held not sufficient to warrant a change in the collector's classification under paragraph 356. Protest overruled.

**No. 40304.**—Protest 766063 of Emrich & Schorsch (New York).

NECKCHAIN CLASPS—JEWELRY.—The articles in question were classified as parts of jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913. They consist of neckchain clasps and are claimed properly dutiable under the provision for materials of metal suitable for use in the manufacture of jewelry at 50 per cent under the same paragraph.

Opinion by SULLIVAN, G. A. Mamluck *v.* United States (6 Ct. Cust. Appls., 556; T. D. 36198) followed as to certain of the clasps, which were held dutiable at 50 per cent under paragraph 356. Protest sustained in part.

**No. 40305.**—Protests 772761, etc., of Tiffany & Co. (New York).

MOUNTINGS—WATCH CHARMS.—Platinum brooch mountings and unfinished compass watch charms classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable at 50 per cent under the same paragraph.

Opinion by SULLIVAN, G. A. Certain platinum brooch mountings and unfinished compass watch charms were held dutiable at 50 per cent under paragraph 356. Abstract 39504 and Mamluck *v.* United States (6 Ct. Cust. Appls., 556; T. D. 36198) followed.

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**No. 40306.**—Protests 764418, etc., of Malhami & Co. et al. (New York).

MEDALS.—Medals classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of metal under paragraph 167.

Opinion by SULLIVAN, G. A. Silver-plated medals used exclusively for devotional purposes and carried in an inside pocket, or on a chain around the neck inside the garments, were held dutiable at 50 per cent under paragraph 167. United States *v.* American Bead Co. (7 Ct. Cust., Appls., —; T. D. 36456) followed.

**No. 40307.**—Protests 691380, etc., of Jones, McDuffee & Stratton Co. (Boston).

STEM WARE.—Glass stem ware classified at 60 per cent ad valorem under paragraph 98, tariff act of 1909, and at 45 per cent under paragraph 84, tariff act of 1913, is claimed dutiable as manufactures of glass.

Opinion by SULLIVAN, G. A.—United States *v.* Fondeville (7 Ct. Cust. Appls., —; T. D. 36457) followed as to stem ware. Protests sustained in part.

**No. 40308.**—Protests 770398, etc., of A. Sterzelbach Sons Co. et al. (New York).

TEAZLED CLOTH.—PILE FABRICS.—Merchandise classified as pile fabrics in chief value of mohair at 45 per cent ad valorem under paragraph 309, tariff act of 1913, is claimed dutiable at 40 per cent under paragraph 308.

Opinion by BROWN, G. A. On the authority of G. A. 7906 (T. D. 36403), relating to teazled cloth, the merchandise in question was held dutiable as cloth in chief value of mohair under paragraph 308.

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BEFORE BOARD 3, OCTOBER 20, 1916.

**No. 40309.**—Protest 793834 of M. Furuya Co. (Seattle).

NORI, DRIED AND TREATED WITH SHOYU—CRUDE SEAWEED—PREPARED VEGETABLE.

WAITE, *General Appraiser:* The commodity in question here is invoiced as "dried seaweed." The testimony shows it is what is known as "hoshi nori." An inspection of the sample reveals the fact that it is in thin sheets about 8 inches square, a dozen or more of these sheets being folded together and placed in a thin paper wrapper. These are put into a tin box which is closed with a cover. There is no evidence to show the boxes were hermetically sealed.

The goods were assessed as prepared vegetables under paragraph 200, tariff act of 1913. The importers' claim is as follows:

Said merchandise is not dutiable as assessed. It is free of duty under paragraph 552 as seaweed, crude. If not free as aforesaid it is dutiable at only 15 per cent ad valorem under paragraph 385 as a manufactured article not enumerated.

We do not think this commodity can be classified under paragraph 385. That claim is therefore overruled.

The testimony of the witness produced on the part of the importers was to the effect that he had seen this seaweed gathered and prepared; that the method of preparation was to take it out of the water and put it in a shallow box, placing a bamboo mat over the seaweed; then another box was placed on top of the first one, and so on. In that condition it was left to dry and was then placed in tin boxes and imported to this country, in which shape it was placed in evidence as a sample at the hearing and is now before the board. We are of the opinion that enough has not been done to this to constitute it a manufactured article, and conclude that it is a crude seaweed free of duty under paragraph 552, as claimed. This paragraph is in the following language:

552. Moss, seaweeds, and vegetable substances, crude or unmanufactured, not otherwise specially provided for in this section.

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What appears to have been the same commodity was passed upon by the board in Abstract 8065 (T. D. 26708). That case was appealed to the Circuit Court, and its decision is found in United States *v.* Furuya (176 Fed., 480; T. D. 30316), wherein the board's decision holding nori dried in sheets to be free of duty under paragraph 617, tariff act of 1897, was affirmed. Paragraph 617 of the law of 1897 is identical, so far as the description of the commodity is concerned, with paragraph 552 of the law of 1913, under which law this entry was made. Following that decision, we sustain the claim in the protest for free entry under paragraph 552.

**No. 40310.**—Protests 793658, etc., of Ohashi Importing Co. (San Francisco).

NORI—SEAWEED—PREPARED VEGETABLE.—Merchandise invoiced as dried seaweed in cans, 100 sheets to the can, classified as prepared vegetables under paragraph 200, tariff act of 1913, is claimed free of duty as crude seaweed under paragraph 552.

Opinion by WAITE, G. A. Certain of the seaweed was found to have been treated with shoyu. This was held properly classified under paragraph 200. Nori in sheets about 12 inches square, dried in the sun and packed in tins of varying sizes, was held free of duty under paragraph 552. Abstract 40309 followed.

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## (T. D. 36744.)

### *Drawback on automobile chassis.*

Drawback on automobile chassis manufactured by Fabrica Italiana Automobili Torino, of Poughkeepsie, N. Y., with the use of imported materials.

TREASURY DEPARTMENT, *October 23, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on automobile chassis manufactured by Fabrica Italiana Automobili Torino, of Poughkeepsie, N. Y., with the use of imported materials or with the use of materials manufactured with the use of imported materials covered by drawback rates now existing or which may be promulgated in the future.

A manufacturing record shall be kept, showing, in the case of each automobile chassis manufactured for exportation with benefit of drawback, the serial number thereof, the quantity, value, and identity of each kind of imported material and of each kind of material manufactured with the use of imported material used in the manufacture of such chassis, and the quantity and value of the waste resulting. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

In liquidation, the quantities of imported and drawback materials which may be taken as a basis for the allowance of drawback may equal the quantities used, less the quantity of the imported material which the value of the waste will replace, as shown by the abstract from the manufacturing record.

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The sworn statements of the manufacturers, dated December 17, 1915, and October 16, 1916, are transmitted herewith.

Drawback may be allowed under these regulations on automobile chassis exported on or after September 9, 1915.

Respectfully, ANDREW J. PETERS,
(101006-51.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36745.)

*Certification of invoices.*

Invoices of merchandise shipped from Cali and Buenaventura, Colombia, to be certified by the consular officer at Cali.

TREASURY DEPARTMENT, *October 23, 1916.*

SIR: The department refers to your letter of September 7, in which you state that Cali and Buenaventura are on the "no-consul" list, and suggest that in view of the fact that there is a consular officer at Cali these places should be removed from the "no-consul" list.

The Department of State advises this department that there is an American consular agent at Cali, Colombia; that there is railway communication between Cali and Buenaventura; and that no reason exists why invoices of merchandise shipped from either of the said places may not be certified by a consular officer.

You are therefore instructed that Cali and Buenaventura will be no longer retained on the "no-consul" list and that invoices of merchandise shipped therefrom should not be accepted unless certified by a consular officer.

Respectfully, ANDREW J. PETERS,
(101208.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36746.)

*Seed-importation act of August 24, 1912.*

Joint regulations of the Secretary of Agriculture and the Secretary of the Treasury omitted from T. D. 36727 of October 16, 1916.

TREASURY DEPARTMENT, *October 24, 1916.*

*To collectors and other officers of the customs:*

The joint regulations of the Secretary of Agriculture and the Secretary of the Treasury for the enforcement of the seed-importation act of August 24, 1912, as amended by the agricultural appropriation act of August 11, 1916, which were omitted from T. D. 36727 of the 16th instant, are appended hereto.

(92655-21.) ANDREW J. PETERS, *Assistant Secretary.*

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THE SEED IMPORTATION ACT.

**AN ACT To regulate foreign commerce by prohibiting the admission into the United States of certain adulterated grain and seeds unfit for seeding purposes (37 Stat., 506).**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That from and after six months after the passage of this act the importation into the United States of seeds of alfalfa, barley, Canadian bluegrass, Kentucky bluegrass, awnless brome-grass, buckwheat, clover, field corn, Kafir corn, meadow fescue, flax, millet, oats, orchard grass, rape, redtop, rye, sorghum, timothy, and wheat, or mixtures of seeds containing any of such seeds as one of the principal component parts, which are adulterated or unfit for seeding purposes under the terms of this act is hereby prohibited; and the Secretary of the Treasury and the Secretary of Agriculture shall, jointly or severally, make such rules and regulations as will prevent the importation of such seeds into the United States: *Provided, however,* That such seed may be delivered to the owner or consignee thereof under bond, to be recleaned in accordance with and subject to such regulations as the Secretary of the Treasury may prescribe, and when cleaned to the standard of purity specified in this act for admission into the United States such seed may be released to the owner or consignee thereof after the screenings and other refuse removed from such seed shall have been disposed of in a manner prescribed by the Secretary of Agriculture: *Provided further,* That this act shall not apply to the importation of barley, buckwheat, field corn, Kafir corn, sorghum, flax, oats, rye, or wheat not intended for seeding purposes, when shipped in bond through the United States or imported for the purpose of manufacture, but such shipment shall be subject to provisions of the act of August fifth, nineteen hundred and nine.

SEC. 2. That seed shall be considered adulterated within the meaning of this act—

First. When seed of red clover contains more than three per centum by weight of seed of yellow trefoil or any other seed of similar appearance to and of lower market value than seed of red clover.

Second. When seed of alfalfa contains more than three per centum by weight of seed of yellow trefoil, burr clover, and sweet clover, singly or combined.

Third. When any kind or variety of the seeds, or any mixture described in section one of this act, contains more than five per centum by weight of seed of another kind or variety of lower market value and of similar appearance: *Provided,* That the mixture of the seed of white and alsike clover, red and alsike clover, or alsike clover and timothy, shall not be deemed an adulteration under this section.

SEC. 3. That seed shall be considered unfit for seeding purposes within the meaning of this act—

First. When any kind or variety of clover or alfalfa seed contains more than one seed of dodder to five grams of clover or alfalfa seed, respectively.

Second. When any kind or variety of the seeds or any mixture described in section one of this act contains more than three per centum by weight of seeds of weeds.

SEC. 4. That any person or persons who shall knowingly violate the provisions of this act shall be deemed guilty of a misdemeanor and shall pay a fine of not exceeding five hundred dollars and not less than two hundred dolars: *Provided,* That any person or persons who shall knowingly sell for seeding purposes seeds or grain which were imported under the provisions of this act for the purpose of manufacture shall be deemed guilty of a violation of this act.

Approved, August 24, 1912.

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AMENDMENTS TO THE SEED-IMPORTATION ACT OF AUGUST 24, 1912.

[Extract from agricultural appropriation act of Aug. 11, 1916 (Public, No. 190—64th Congress).]

* * * And hereafter the provisions of said act, approved August twenty-fourth, nineteen hundred and twelve, shall be applied to seed of vetch and rye grass; and hereafter, when any kind or variety or mixture of the seeds subject to the provisions of said act of August twenty-fourth, nineteen hundred and twelve, as hereby amended, shall contain less than sixty-five per centum of live pure seed as distinguished from dead seed, chaff, dirt, other seeds, or foreign matter, such seeds or mixtures thereof shall be deemed unfit for seeding purposes within the meaning of said act approved August twenty-fourth, nineteen hundred and twelve, and the importation of such seed or mixture thereof is prohibited: *Provided, however*, That seed of Kentucky bluegrass and seed of Canada bluegrass shall not be considered unfit for seeding purposes when they contain fifty per centum or more of live pure seed; * * *.

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JOINT REGULATIONS (SECOND REVISION) OF THE SECRETARY OF THE TREASURY AND SECRETARY OF AGRICULTURE UNDER THE SEED-IMPORTATION ACT, APPROVED AUGUST 24, 1912, AS AMENDED AUGUST 11, 1916.

The seed importation act of August 24, 1912, was amended August 11, 1916, by adding rye grass and vetch to the seeds subject to the act and by prohibiting the entry of seeds containing less than a specified percentage of pure live seed.

The regulations of the Secretary of the Treasury and the Secretary of Agriculture issued as T. D. 35363 of May 6, 1915, are hereby amended to read as follows:

*Regulation 1.—Short title of the act.*

The act "To regulate foreign commerce by prohibiting the admission into the United States of certain adulterated grain and seeds unfit for seeding purposes," approved August 24, 1912, as amended August 11, 1916, shall be known and referred to as "The seed-importation act."

*Regulation 2.—Definitions.*[1]

(*a*) *Clover.*—The term "clover" shall include:

Trifolium hybridum.....alsike clover.
Trifolium incarnatum.....crimson clover.
Trifolium pratense.....red clover.
Trifolium repens.....white clover.

(*b*) *Dodder.*—The term "dodder" shall include all species of Cuscuta.

(*c*) *Millet.*—The term "millet" shall include:

Chaetochloa italica (Setaria italica).....Hungarian or German millet.
Panicum miliaceum.....broom-corn millet.

(*d*) *Rape.*—The term "rape" shall include the forms of *Brassica napus*, winter rape, commonly grown as forage.

(*e*) *Rye grass.*—The term "rye grass" shall include the cultivated species of *Lolium*.

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[1] The technical plant names in the lists herein given are those in use by the United States Department of Agriculture. In cases where these names are not those recognized in the Index Kewensis the Kew name follows in parentheses. The common names are not complete and are given only by way of explanation.

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(*f*) *Sorghum.*—The term "sorghum" shall include the saccharine varieties of *Holcus sorghum* (*Sorghum vulgare*).

(*g*) *Kafir corn.*—The term "Kafir corn" shall include the nonsaccharine, or grain, varieties of *Holcus sorghum* (*Sorghum vulgare*), exclusive of broom corn.

(*h*) *Vetch.*—The term "vetch" shall include *Vicia sativa*, common or spring vetch, and *Vicia villosa*, hairy vetch.

(*i*) *Weeds.*—The following plants shall be considered weeds:

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| Abutilon theophrasti (A. avicennae) | Indian mallow. |
| Achillea millefolium | yarrow. |
| Agropyron repens | quack-grass. |
| Agrostemma githago (Lychnis githago) | corn cockle. |
| Allium vineale | garlic, wild onion. |
| Alsine (Stellaria) | chickweed. |
| Amaranthus | amaranth. |
| Ambrosia | ragweed. |
| Anagallis arvensis | pimpernel. |
| Anthemis | Mayweed. |
| Anthyllis vulneraria | kidney vetch. |
| Atriplex | saltbush. |
| Avena fatua<br>Avena fatua glabrescens | wild oats. |
| Axyris amaranthoides | ——— |
| Berteroa incana (Alyssum incanum) | hoary alyssum. |
| Brassica | mustard. |
| Except B. napus (winter rape). | |
| Bromus hordeaceus<br>Bromus racemosus<br>Bromus secalinus<br>Bromus tectorum | chess. |
| Bursa bursa-pastoris (Capsella bursa-pastoris) | shepherd's-purse. |
| Camelina | false flax. |
| Campe (Barbarea) | winter cress. |
| Carduus (including Cnicus) | thistle. |
| Carex | sedge. |
| Centaurea | star thistle, cornflower. |
| Cerastium | mouse-ear chickweed. |
| Chaetochloa glauca (Setaria glauca) | yellow foxtail, pigeon grass. |
| Chaetochloa viridis (Setaria viridis) | green foxtail. |
| Chenopodium | lamb's-quarters. |
| Chrysanthemum leucanthemum | oxeye daisy. |
| Cichorium intybus | chicory. |
| Conringia orientalis | hare's-ear mustard. |
| Convolvulus | bindweed. |
| Cuscuta | dodder. |
| Datura | jimson weed. |
| Daucus carota | wild carrot. |
| Echinochloa crus-galli (Panicum crus-galli) | barnyard grass. |
| Echium vulgare | blueweed. |
| Eragrostis | stink-grass. |
| Erodium cicutarium | alfilaria. |
| Eruca sativa | rocket (roquette). |
| Erysimum | treacle mustard. |
| Festuca myuros | rat's-tail fescue. |

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| Galium | bedstraw. |
| Geranium | crane's-bill. |
| Grindelia squarrosa | gumweed. |
| Helianthus | sunflower. |
| Hibiscus trionum | bladder ketmia. |
| Hieracium | hawkweed. |
| Holcus halepensis (Sorghum halepense) | Johnson grass. |
| Hypochaeris radicata | cat's-ear. |
| Ipomoea | morning-glory. |
| Iva | marsh elder. |
| Juncus | rush. |
| Lappula echinata (Echinospermum lappula) | stickseed. |
| Lappula texana (Echinospermum redowskii) | stickseed. |
| Leontodon autumnale | fall dandelion. |
| Leonurus cardiaca | motherwort. |
| Lepidium | peppergrass. |
| Linaria | butter-and-eggs; toadflax. |
| Lithospermum arvense | corn gromwell. |
| Lolium temulentum | darnel. |
| Lotus | bird's-foot trefoil. |
| Lychnis | campion. |
| Madia sativa | tarweed. |
| Matricaria inodora | scentless camomile. |
| Medicago arabica (M. maculata) | spotted bur clover. |
| Medicago hispida denticulata (M. denticulata) | toothed bur clover. |
| Medicago lupulina | yellow trefoil. |
| Melilotus | sweet clover. |
| Molinia coerulea | ——— |
| Nepeta cataria | catnip. |
| Neslia paniculata | ball mustard. |
| Notholcus (Holcus) | velvet grass. |
| Oenothera biennis | evening primrose. |
| Picris | oxtongue. |
| Plantago | buckhorn; plantain. |
| Polygonum | knotweed; bindweed; smartweed; lady's-thumb. |
| Portulaca oleracea | purslane. |
| Potentilla | five-finger. |
| Prunella vulgaris | heal-all. |
| Ranunculus | buttercup. |
| Raphanus raphanistrum | wild radish. |
| Rosa | wild rose. |
| Rudbeckia hirta | brown-eyed Susan. |
| Rumex | dock; sorrel. |
| Salsola | Russian thistle. |
| Sanguisorba | burnet. |
| Sherardia arvensis | field madder. |
| Silene | catchfly. |
| Sisymbrium | tumbling mustard. |
| Solanum | nightshade. |
| Sonchus | sow thistle. |
| Spergula | spurry. |
| Syntherisma (Digitaria) | crab-grass. |
| Taraxacum | dandelion. |

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Thlaspi arvense.....Frenchweed.
Tragopogon pratensis.....goat's-beard.
Trifolium.....wild clover.
Except T. hybridum, T. incarnatum, T. pratense, and T. repens.
Vaccaria pyramidata (Saponaria vaccaria).....cow cockle.
Valerianella locusta (V. olitoria).....corn salad.
Verbena.....verbena.
Vicia.....vetch.
Except V. sativa and V. villosa.

*Regulation 3.—Sampling.*

The collector of customs shall draw and forward for examination, without specific request from the Secretary of Agriculture, samples of all seeds of alfalfa, Canadian bluegrass, Kentucky bluegrass, millet, orchard grass, rape, redtop ryegrass, timothy, clover, meadow fescue, awnless brome-grass, and vetch, when entered for consumption, whether or not a consular invoice is presented on the entry thereof.

Samples of shipments of the other seeds enumerated in the act shall be drawn and forwarded only when the Secretary of Agriculture shall make specific request for such samples.

*Regulation 4.—Drawing samples.*

When a shipment is made up of several lots differing in quality or price, a sample of each lot shall be submitted as though each lot were a separate shipment. The sample of each lot or shipment submitted to the seed laboratories, in accordance with regulation 5, shall be drawn as follows: When a lot consists of five sacks or less, each sack shall be sampled, and when consisting of more than five sacks, every fifth sack, but not less than five sacks, shall be sampled, except that a separate sample shall be drawn from each sack of screenings or refuse resulting from the recleaning in bond of seeds imported subject to the act.

*Regulation 5.—Samples, where sent.*

All samples drawn under the act by customs officers shall be forwarded to the respective seed laboratories under which the ports are grouped in the following list of seed-laboratory districts unless otherwise specifically requested by the Secretary of Agriculture or his representative.

1. *Seed Laboratory, United States Department of Agriculture, Washington, D. C.*—All ports in the States of Maine, Vermont, Rhode Island, New York, New Jersey, New Hampshire, Massachusetts, Connecticut, Pennsylvania, Maryland, Delaware, Virginia, Ohio, West Virginia, North Carolina, South Carolina, and Georgia, and Port Huron and Detroit, Mich.

2. *Seed Laboratory, Purdue University, La Fayette, Ind.*—All ports in the States of Indiana, Illinois, Kentucky, Tennessee, Wisconsin, and Minnesota, and all ports in Michigan except Port Huron and Detroit.

3. *Seed Laboratory, Agricultural Experiment Station, Columbia, Mo.*—All ports in the States of Missouri, Iowa, Arkansas, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Colorado.

4. *Seed Laboratory, Agricultural Experiment Station, Baton Rouge, La.*—All ports in the States of Alabama, Mississippi, Florida, Louisiana, Texas, and New Mexico.

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5. *Seed Laboratory, Agricultural College, Corvallis, Oreg.*—All ports in the States of Montana, Wyoming, Idaho, Oregon, and Washington.

6. *Seed Laboratory, Agricultural Experiment Station, Berkeley, Cal.*—All ports in the States of California, Nevada, Arizona, and Utah.

*Regulation 6.—Notice to consignee.*

The collector of customs shall immediately notify the consignee that samples have been drawn and that the remainder of the shipment must be held intact, pending a decision of the Secretary of Agriculture in the matter.

*Regulation 7.—Examination of seeds—Delivery in bond.*

Seeds offered for importation into the United States from any foreign country, after samples of each lot have been taken for examination, shall be admitted only after the samples have been examined and pronounced to be neither adulterated nor unfit for seeding purposes within the meaning of the seed importation act: *Provided, however*, That collectors of customs may deliver to consignees shipments which have been sampled on the execution of a bond in a sum equal to the invoice value of the seeds, together with the duty thereon, if any, conditioned upon the delivery of the shipments, or any part thereof, to the collector when demanded by him for any reason. Form Cat. No. 3393 may be modified and used for this bond.

*Regulation 8.—Release or recleaning of shipment.*

If the Secretary of Agriculture shall inform the collector that the seeds are not in violation of the said act, the collector shall no longer detain the shipment under that act, and the bond, if any, given pursuant to regulation 7 shall be canceled; but if the seeds are found to be in violation of the said act, the collector may permit the importer to reclean the seeds under bond at the expense of the importer, in accordance with regulations 9, 10, and 11.

*Regulation 9.—Samples of recleaned seeds.*

The collector of customs shall draw and forward to the district seed laboratory designated in regulation 5 a sample of the recleaned seeds, together with a sample from each sack of the screenings or other refuse removed from the seeds in the course of cleaning, accompanied by a statement of the weight of the recleaned seeds and the weight of each individual sack of screenings, and the same procedure shall be followed with respect to such samples of the recleaned seeds as upon the original sample.

*Regulation 10.—Exportation of shipment.*

If the Secretary of Agriculture shall inform the collector that the sample of the recleaned seeds is not satisfactory, or if the importer shall decline to reclean any shipment of seeds which the Secretary of Agriculture has found to be in violation of the said act, the collector shall refuse delivery of the shipment and require it to be exported under customs supervision.

*Regulation 11.—Disposition of refuse from recleaning.*

If the Secretary of Agriculture shall inform the collector that any seeds which have been recleaned pursuant to regulation 8 are not adulterated and are fit for seeding purposes, such seeds may be released to the owner or consignee upon condition that—

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(1) The screenings and other refuse removed in the course of recleaning shall have been exported under customs supervision; or

(2) The screenings and other refuse shall have been destroyed under customs supervision; or

(3) The dead seed, chaff, dirt, and similar refuse contained in the screenings shall have been destroyed under customs supervision and the balance of the screenings ground or otherwise treated under customs supervision so as to render any seeds contained therein incapable of germination; or

(4) The screenings or other refuse shall have been sacked, sealed, and tagged to the satisfaction of the collector of customs and are retained subject to the conditions of the bond given pursuant to regulation 7 to secure delivery of the shipment.

Screenings and other refuse retained in accordance with method 4 of this regulation may be recleaned at any time within 12 months from the date of the entry of the shipment. Unless recleaned within the said period of 12 months or treated according to method 2 or 3 of this regulation, such screenings or other refuse shall be exported under customs supervision.

*Regulation 12.—Imported seed in violation of the seed-importation act not to be mixed with other seed.*

Mixing any seed with a lot or shipment of imported seed which has been found to be in violation of the seed-importation act is prohibited, except that in cases where it shall appear to the satisfaction of the Secretary of Agriculture that two or more such lots or shipments of seed offered for importation are of substantially the same quality, they may be mixed for the purpose of recleaning upon written permit of the Secretary of Agriculture.

*Regulation 13.—Notice of removal from port of entry.*

The collector of customs will notify the Secretary of Agriculture whenever seed which has been sampled under the seed-importation act is moved from one port to another port before being finally released.

*Regulation 14.—Disposition of detained shipments to be reported.*

The collector of customs shall inform the Secretary of Agriculture of the disposition made of every shipment detained under these regulations.

*Regulation 15.—Failure to export to be reported.*

Should the importer fail to export within three months from the date of refusal of delivery any seeds the delivery of which has been refused under these regulations, the collector shall report the facts to the Secretary of the Treasury and to the United States attorney.

*Regulation 16.—Willful violation to be reported.*

The collector of customs shall report to the Secretary of the Treasury and to the United States attorney any willful violation of the act which shall come to his knowledge.

*Regulation 17.—Appeal to the Secretary of Agriculture.*

All applications for relief from decisions as to the quality of seeds arising under these regulations should be addressed to the Secretary of Agriculture.

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*Regulation 18.—Forwarding of samples of all forage-plant seeds.*

Irrespective of the foregoing regulations, collectors of customs will forward to the Seed Laboratory, United States Department of Agriculture, Washington, D. C., 2-ounce samples of each lot of all grass, clover, and other forage-plant seeds imported into the United States.

*Regulation 19.—Taking effect of regulations.*

These regulations shall supersede all previous regulations under the seed-importation act, and shall take effect November 1, 1916.

D. F. HOUSTON,
*Secretary of Agriculture.*
WM. P. MALBURN,
*Acting Secretary of the Treasury.*

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## (T. D. 36747.)

### *Drawback on flavoring extracts.*

Drawback on flavoring extracts manufactured by the Liquid Carbonic Co., of Chicago, Ill., with the use of domestic tax-paid alcohol.—T. D. 29363 of November 24, 1908, T. D. 34109 of January 28, 1914, and T. D. 35380 of May 8, 1915, revoked.

TREASURY DEPARTMENT, *October 25, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on flavoring extracts manufactured by the Liquid Carbonic Co., of Chicago, Ill., with the use of domestic tax-paid alcohol.

A manufacturing record shall be kept, showing, in the case of each batch of flavoring extract manufactured for exportation with benefit of drawback, the lot or batch number thereof, the quantity and kind of flavoring extract produced, and the quantity of domestic tax-paid alcohol used in the manufacture thereof. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of domestic tax-paid alcohol used in the manufacture of the exported flavoring extracts, as shown by the abstract from the manufacturing record, with a maximum of the quantity shown in the sworn statement and schedule of manufacture, dated July 11, 1916, which is transmitted herewith.

Supplemental sworn schedules showing changes in formulas or covering other flavoring extracts may be filed, and upon verification of such supplemental schedules drawback may be allowed on flavoring extracts manufactured in accordance therewith.

T. D. 29363 of November 24, 1908, T. D. 34109 of January 28, 1914, and T. D. 35380 of May 8, 1915, are hereby revoked.

Respectfully, ANDREW J. PETERS,
(59155.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*



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## (T. D. 36748.)

### *Amendment of Customs Regulations of 1915.*

**Articles 754 and 755 of the Customs Regulations of 1915 amended to permit entry of merchandise direct from the importing vessel to a manufacturing bonded warehouse without appraisement.**

TREASURY DEPARTMENT, *October 27, 1916.*

SIR: The department refers to your letter of the 11th ultimo, recommending the amendment of article 754 of the Customs Regulations of 1915 in such manner as to permit goods to be entered for use in a manufacturing bonded warehouse of class 6 without appraisement. This recommendation is concurred in by the collectors at the principal ports. Article 754 of the Customs Regulations of 1915 is, therefore, amended to read as follows:

"Materials and articles imported for use in a manufacturing bonded warehouse may be entered for transfer direct from the importing vessel to a bonded manufacturing warehouse of class 6 without appraisement or payment of duty."

The entry shall be in substantially the following form:

No. ——. *Entry for bonded manufacturing warehouse.*

Entry of merchandise imported by ——— in the steamship ——— from ——— on the —— day of ———, for use in the manufacturing bonded warehouse of ———, located at ———.

| Marks. | Nos. | Description. | Value. | Rate. | Estimated duty. |
|---|---|---|---|---|---|
| ..... | ..... | ..... | ..... | ..... | ..... |
| ..... | ..... | ..... | ..... | ..... | ..... |
| ..... | ..... | ..... | ..... | ..... | ..... |

*Declaration.*

I, ———, of ———, do solemnly and truly declare that the merchandise described in the within entry is imported for the sole purpose of being manufactured in the bonded warehouse located at ———, and to be exported therefrom as required by law; that the entry and invoice presented to the collector of customs are true and correct; and that I do not know of the existence of any other invoice showing a different quantity, price, or value for the said merchandise.

———,
*Importer or owner.*

Article 755 of the Customs Regulations of 1915 is hereby revoked.

Respectfully, WM. P. MALBURN,
(94930) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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## (T. D. 36749.)

### *Revocation of drawbacks.*

**T. D. 35161 of February 24, 1915, revoking certain Treasury decisions providing for the payment of drawback on articles manufactured with the use of imported materials extended.**

TREASURY DEPARTMENT, *October 26, 1916.*

*To collectors of customs and others concerned:*

The provisions of T. D. 35161, dated February 24, 1915, revoking certain Treasury decisions specified therein allowing drawback on articles manufactured with the use of imported materials, are hereby extended to cover the following decisions.

(102789.) WM. P. MALBURN, *Assistant Secretary.*

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| T. D. | Name of claimant. | T. D. | Name of claimant. |
|---|---|---|---|
| 28728 | American Locomotive Automobile Co. | 28194 | Barber Asphalt Paving Co. |
| 27667 | American Sheet & Tin Plate Co. | 29186 | Do. |
| 27736 | Do. | 32856 | Do. |
| 27340 | Armour & Co. | 33155 | Do. |
| 24022 | Atlantic Refining Co. | 22833 | Do. |
| 27835 | Do. | 28911 | Do. |
| 23895 | American Steel & Wire Co. | 25888 | Boas Thread Co. |
| 21016 | Alexander Smith & Sons Carpet Co. | 29833 | Do. |
| 22975 | Do. | 24833 | Buffalo Steel Co. |
| 25887 | Do. | 23596 | Bornn & Co. |
| 32258 | The Autosales Gum & Chocolate Co. | 22834 | Brewster Cocoa Manufacturing Co. |
| 31858 | American Shade Roller Co. | 15913 | Brunswick-Balke-Collender Co. |
| 31780 | Argam Tannin Co. | 28454 | Do. |
| 31175 | Abbe Engineering Co. | 14578 | Bartram Bros. |
| 31041 | Aluminum Sign Co. | 29919 | Badger Brass Manufacturing Co. |
| 30993 | Art China Import Co. | 30057 | Do. |
| 30818 | American Undergarment Co. | 24192 | Bemis Bros. Bag Co. |
| 29718 | Abbott Worsted Co. | 33819 | Do. |
| 29905 | Alfred Benjamin & Co. | 32720 | The Box Co. of America. |
| 29453 | Berry, Kelley & Chadwick. | 31984 | The Bloodine Corporation. |
| 29291 | The Bon Bon Co. | 31964 | Brill & Krigsman. |
| 28154 | William & Charles Beck. | 31437 | A. M. Barson & Co. |
| 28556 | Brewster & Co. | 31390 | Bornn Hat Co. |
| 34506 | Do. | 30503 | Bockman & Shepard. |
| 28122 | E. J. Brooks & Co. | 30822 | Berlin & Trosky. |
| 26264 | Bawo & Dotter (Inc.). | 31138 | Do. |
| 27148 | Block Light Co. | 29845 | California Fig Syrup Co. |
| 30973 | Do. | 29912 | Do. |
| 31230 | Do. | 30030 | Do. |
| 31231 | Do. | 29580 | Computing Scale Co. |
| 31622 | Do. | 29891 | Do. |
| 34714 | Do. | 29716 | A. Colburn Co. |
| 28683 | Burlington Venetian Blind Co. | 29589 | Curlew Creamery Co. |
| 25983 | Barber Asphalt Paving Co. | 29111 | John Curtin. |
| 26433 | Do. | 28758 | Churchill & Allen. |
| | | 27679 | The Chase & Baker Co. |
| | | 28015 | Do. |

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| T. D. | Name of claimant. |
|---|---|
| 27152 | P. Carey Manufacturing Co. |
| 27599 | Cott-a-lap Co. |
| 31693 | Do. |
| 26291 | Carver Cotton Gin Co. |
| 29842 | Do. |
| 23289 | Cary Manufacturing Co. |
| 23883 | Do. |
| 24417 | Do. |
| 24543 | Do. |
| 24558 | Do. |
| 23861 | The Capewell Horse Nail Co. |
| 33460 | Cleveland-Akron Bag Co. |
| 31370 | Christman Sons. |
| 30995 | Cawley, Clark & Co. |
| 31721 | Do. |
| 30622 | George C. Clark Metal Last Co. |
| 30577 | Champion Ignition Co. |
| 31415 | Do. |
| 30638 | Colgan Gum Co. |
| 30539 | M. J. Corbett & Co. |
| 32062 | Do. |
| 29190 | Corn Products Refining Co. |
| 28465 | Defender Photo Supply Co. |
| 26135 | De Laval Steam Turbine Co. |
| 31607 | Daggett & Ramsdell. |
| 29155 | Electrelle Co. |
| 27735 | Eberle Tanning Co. |
| 23307 | Edwin C. Burt Co. |
| 23104 | Excelsior Quilting Co. |
| 31989 | Electrical Alloy Co. |
| 31819 | Emil Calman & Co. |
| 29987 | Fulton Iron Works. |
| 11104 | Fay Bros. |
| 27321 | Alfred J. Foster. |
| 27816 | Do. |
| 27566 | Falcon Packing Co. |
| 26755 | Flintkote Manufacturing Co. |
| 31553 | Do. |
| 23796 | Florence Iron Works. |
| 24169 | Do. |
| 24694 | Do. |
| 29901 | J. Gallay. |
| 23581 | M. Gould's Son & Co. |
| 23802 | Do. |
| 24776 | Gunn Furniture Co. |
| 31996 | B. F. Goodrich Co. |
| 30861 | William L. Gilbert Clock Co. |
| 29321 | Hall Capsule Co. |
| 29285 | A. W. Harris & Co. |
| 28192 | Heidelburg, Wolff & Co. |
| 28902 | Do. |
| 28677 | Hildreth & Segelken. |
| 28213 | Charles E. Hires & Co. |
| 27696 | William Hills, jr. |
| 29917 | Do. |
| 33288 | Do. |
| 27724 | J. W. & A. P. Howard & Co. |
| 25280 | Hall & Ruckel. |
| 29269 | Do. |
| 24092 | Hartford Carpet Co. |
| 24552 | Harshaw, Fuller & Goodwin Co. |
| 22811 | Heyl Bros. Co. |
| 32592 | Do. |
| 32014 | Hawks Furniture Co. |
| 31558 | Oscar Hammerstein. |
| 30419 | Hauenstein & Co. |
| 30022 | Hendee Manufacturing Co. |
| 31065 | Do. |
| 31340 | Do. |
| 30553 | Hoyt Metal Co. |
| 29247 | Icy-Hot Bottle Co. |
| 14256 | E. Ingraham Co. |
| 32948 | Ilsley, Doubleday & Co |
| 33109 | Do. |
| 29433 | Do. |
| 31056 | International Tobacco Co. |
| 26294 | Thomas Jackson & Co. |
| 23527 | H. W. Johns-Manville Co. |
| 23878 | Do. |
| 28117 | Do. |
| 31737 | Do. |
| 29213 | Kauffman & Harris. |
| 27479 | Keystone Fireproofing Co. |
| 24925 | Koscherak Bros. |
| 23240 | George E. Keith Co. |
| 23335 | Do. |
| 17710 | Kaufmann & Strauss Co. |
| 24879 | Do. |
| 31066 | Do. |
| 16596 | The Kursheedt Manufacturing Co. |
| 22789 | Do. |
| 24804 | Do. |
| 26704 | Do. |
| 27881 | Do. |
| 29489 | Do. |
| 30171 | Do. |
| 31580 | E. W. Kelley. |
| 29862 | Lanman & Kemp. |
| 29363 | Liquid Carbonic Co. |
| 28415 | Lackawanna Steel Co. |
| 27043 | Lindsay Light Co. |
| 30132 | Do. |
| 30430 | Do. |
| 25125 | Landers, Frary & Clark. |
| 25126 | Do. |
| 25026 | Lambert Pharmacal Co. |
| 18953 | Laird, Schober & Co. |
| 20148 | Do. |
| 32119 | George Lueders & Co. |
| 31700 | Lidgerwood Manufacturing Co. |
| 30950 | Locke & Clarke. |
| 29796 | Robert P. McKenzie Co. |
| 30618 | Do. |
| 28137 | Marden, Orth & Hastings. |
| 30101 | Do. |
| 31645 | Do. |
| 32181 | Do. |
| 28368 | John Mathews (Inc.). |
| 29480 | Do. |
| 27957 | A. R. Mosler & Co. |
| 17905 | McKesson & Robbins. |
| 18180 | Do. |

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| T. D. | Name of claimant. |
|---|---|
| 14901 | Magnolia Metal Co. |
| 31875 | Do. |
| 32337 | Do. |
| 32892 | Manufacturing Co. of America. |
| 31392 | Morgan Engineering Co. |
| 31013 | Middletown Chemical Co. |
| 30627 | The Mann Bros. Co. |
| 29157 | Nestor Granaclis Co. |
| 28211 | New Haven Clock Co. |
| 28978 | New York Flexible Metallic Hose & Tubing Co. |
| 28093 | North Packing & Provision Co. |
| 27432 | New England Confectionery Co. |
| 30947 | Do. |
| 24832 | National Biscuit Co. |
| 27334 | Do. |
| 24837 | National Gum & Mica Co. |
| 11513 | Norwich Insulating Wire Co. |
| 24488 | Do. |
| 31998 | New England Dressed Meat & Wool Co. |
| 31155 | New York Watering Co. |
| 30515 | New Jersey Oil & Meal Co. |
| 30888 | Do. |
| 30889 | Do. |
| 29654 | Oriental Textile Mills. |
| 31063 | Do. |
| 32702 | Ohio Knitting Mills Co. |
| 29319 | Philip Morris & Co. |
| 29587 | Do. |
| 29488 | Parkersburg Iron Co. |
| 29540 | J. T. Perkins Co. |
| 29458 | Do. |
| 31064 | Do. |
| 29770 | Prospero De Nobili & Co. |
| 28066 | Pope Manufacturing Co. |
| 28193 | Do. |
| 28737 | Postum Cereal Co. |
| 26321 | Protegit Co. |
| 26532 | Do. |
| 25299 | Peruna Drug Manufacturing Co. |
| 27349 | Do. |
| 28708 | Do. |
| 18783 | Pittsburgh Reduction Co. |
| 31914 | Pacific Mills. |
| 31346 | Pulver Chocolate & Chicle Manufacturing Co. |
| 29195 | Quaker City Preserves Co. |
| 29525 | Quaker City Rubber Co. |
| 31692 | Do. |
| 29069 | Quaker Oats Co. |
| 31228 | Do. |
| 29474 | Reo Motor Car Co. |
| 26950 | Hans Rees' Sons. |
| 24397 | The Rio Chemical Co. |
| 28114 | Do. |
| 29476 | Do. |
| 23840 | A. Roberson & Son. |
| 24031 | Do. |
| 29784 | Nathan Ries. |
| 31440 | Regal Shoe Co. |
| 30116 | Rapid Addressing Machine Co. |
| 30437 | Royal Ascot Cigarette Co. |
| 30114 | Russia Cement Co. |
| 28970 | Seeman Bros. |
| 28084 | The T. A. Slocum Co. |
| 30375 | Do. |
| 26496 | Do. |
| 28746 | Surpass Leather Co. |
| 27011 | Stewart Hartshorn Co. |
| 27619 | Do. |
| 31931 | Do. |
| 27095 | Skillings, Whitneys & Barnes Lumber Co. |
| 27122 | Simonds Manufacturing Co. |
| 25816 | Strouse, Adler & Co. |
| 26764 | Do. |
| 25374 | Sherwin-Williams Co. |
| 30735 | Do. |
| 31643 | Do. |
| 25327 | L. S. Starrett Co. |
| 30007 | Do. |
| 24666 | Stolz Manufacturing Co. (Tinsel Manufacturing Co.). |
| 24007 | Swift & Co. |
| 29281 | Do. |
| 28093 | Swift & Co. (North Packing & Provision Co.). |
| 23460 | Sicilian Asphalt Paving Co. |
| 28736 | Do. |
| 28839 | Do. |
| 22340 | Standard Rock Candy Co. |
| 22835 | Do. |
| 21094 | Sweet-Orr & Co. |
| 20667 | Switzer & Schussel. |
| 19300 | Scott & Bowne. |
| 14677 | Do. |
| 32146 | Sugden Press Bag Co. |
| 31995 | H. H. Sheip Manufacturing Co. |
| 31807 | Stern & Saalberg Co. |
| 30005 | Spencer - Kellogg & Sons (Inc.). |
| 29707 | Troy Carriage Sun Shade Co. |
| 27958 | Turco-American Tobacco Co. |
| 30948 | Do. |
| 25547 | Do. |
| 23123 | Tatham Bros. |
| 24635 | Do. |
| 31194 | Triangle Waist Co. |
| 29709 | United Shoe Machinery Co. |
| 29018 | Union Petroleum Co. |
| 26912 | United States Leather Co. |
| 25855 | Do. |
| 31462 | United States Clothes Pin Co. |
| 22000 | Vermont Shade Roller Co. |
| 30575 | Vacuum Specialty Co. |
| 29355 | Waltham Bleachery & Dye Works. |
| 29169 | R. Wallace & Sons Manufacturing Co. |

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| T. D. | Name of claimant. | T. D. | Name of claimant. |
|---|---|---|---|
| 29335 | White River Chair Co. | 26302 | Wichert & Gardiner. |
| 28116 | O. H. Wheeler Manufacturing Co. | 32897 | Do. |
| 24794 | Warner Bros. Co. | 28930 | Wichert & Gardiner (John J. Lattemann Shoe Co.) |
| 29379 | Do. | 22608 | Wells & Richardson Co. |
| 25400 | Woelfel Leather Co. | 22629 | Wood & Selick (Inc.). |
| 29898 | Do. | 26712 | Do. |
| 24044 | H. K. Wampole & Co. | 29041 | Do. |
| 28974 | Do. | 29693 | Western Clock Co. |
| 24045 | Westinghouse Electric & Manufacturing Co. | 18045 | Western Electric Co. |
| 24446 | Do. | 26406 | Winchester Repeating Arms Co. |
| 31179 | Do. | 32116 | The J. B. Williams Co. |
| 23405 | Weingarten Bros. | 32024 | I. B. Willams & Sons. |
| 23235 | H. B. Wiggins Sons. | 30499 | The H. C. White Co. |
| 22961 | Wichert & Gardiner. | 31600 | Do. |

## (T. D. 36750.)

*Drawback on watches.*

Drawback on watches manufactured by D. Gruen, Sons & Co., of Cincinnati, Ohio, with the use of imported watch movements.—T. D. 27521 of July 25, 1906, revoked.

TREASURY DEPARTMENT, *October 26, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on watches manufactured by D. Gruen, Sons & Co., of Cincinnati, Ohio, with the use of imported watch movements.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated October 17, 1916, transmitted herewith, showing, in the case of each lot of watches manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the number of watches produced, the grade of imported movements appearing therein, and the particulars of importation of such movements. An abstract from such record shall be filed with the drawback entry.

The allowance for each watch exported shall not exceed one imported watch movement of the kind and grade appearing therein, as shown by the abstract from the manufacturing record.

Drawback may be allowed under these regulations on watches exported on or after June 15, 1916.

T. D. 27521 of July 25, 1906, is hereby revoked.

Respectfully, WM. P. MALBURN,
(105174.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Cleveland, Ohio.*

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(T. D. 36751.)

*Drawback on witch-hazel.*

T. D. 36328 of April 19, 1916, providing for drawback on witch-hazel manufactured by E. E. Dickinson & Co. (Inc.), of Essex, Conn., with the use of domestic tax-paid alcohol amended.

TREASURY DEPARTMENT, *October 26, 1916.*

SIR: The department's regulations of April 19, 1916 (T. D. 36328), providing for the payment of drawback on witch-hazel manufactured by E. E. Dickinson & Co. (Inc.), of Essex, Conn., with the use of domestic tax-paid alcohol, are hereby amended to provide that a manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated October 16, 1916, showing, in the case of each lot of witch-hazel manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity of witch-hazel produced, and the net quantity and identity of domestic tax-paid alcohol used in the manufacture thereof.

The said regulations are further amended to provide that the allowance shall not exceed the quantity of domestic tax-paid alcohol used in the manufacture of the exported preparation, as shown by the abstract from the manufacturing record.

The supplemental sworn statement of the manufacturers, dated October 16, 1916, above referred to, is transmitted herewith.

Respectfully, WM. P. MALBURN,
(68829.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36752.)

*Drawback on pepto-mangan (Gude).*

Drawback allowed on pepto-mangan (Gude) manufactured by the M. J. Breitenbach Co., of New York, N. Y., with the use of domestic tax-paid alcohol.—T. D. 26781 of October 11, 1905, T. D. 27249 of April 2, 1906, and T. D. 27656 of October 15, 1906, revoked.

TREASURY DEPARTMENT, *October 26, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on a medicinal preparation known as pepto-mangan (Gude) manufactured by the M. J. Breitenbach Co., of New York, N. Y., with the use of domestic tax-paid alcohol.

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The allowance shall not exceed the quantity of domestic tax-paid alcohol used in the manufacture of the exported pepto-mangan, as shown in the sworn statement of the manufacturers, dated October 5, 1916, which is transmitted herewith for filing in your office.

Supplemental sworn statements may be filed showing other formulas for the manufacture of the preparation and the bottling of the same in other sized containers than those specified in the sworn statement, under which, after verification and approval, drawback may be allowed on the preparation contained therein.

T. D. 26781 of October 11, 1905, T. D. 27249 of April 2, 1906, and T. D. 27656 of October 15, 1906, are hereby revoked.

Respectfully, WM. P. MALBURN,
(31072.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36753.)

*Asphalt roofing paper and shingles.*

So-called asphalt roofing paper and asphalt shingles composed of asphaltic bituminous matter, paper, and a coating of silicious mineral matter, paper chief value, dutiable as manufactures in chief value of paper not specially provided for at the rate of 25 per cent ad valorem under paragraph 332 of the tariff act of 1913.

TREASURY DEPARTMENT, *October 26, 1916.*

SIR: The department refers to your letter of July 17, 1916, and other correspondence relative to the classification of certain so-called asphalt roofing paper and asphalt shingles.

The first, it appears, is in rolls and the second cut to the form of shingles, and both are composed of asphaltic bituminous matter, paper, and a coating of silicious mineral matter, the paper, it appearing, being the component material of chief value. In the manufacture of the articles it appears that a basic paper is first saturated with a bituminous matter and then coated with a silicious mineral substance.

Paragraph 320 of the tariff act of 1913 is as follows:

Sheathing paper, pulpboard in rolls, not laminated, roofing felt, common paper-box board, not coated, lined, embossed, printed, or decorated in any manner, nor cut into shapes for boxes or other articles, 5 per centum ad valorem.

The terms "roofing felt" and "common paper-box board" appear to be qualified by the phrase of limitation "not coated, lined, embossed, printed, or decorated in any manner, nor cut into shapes for boxes or other articles." As the felt or paper under consideration has been coated, it is expressly excluded from the above provision for roofing felt. It would also appear that the merchandise is not a sur-

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face-coated paper or manufacture thereof within the meaning of paragraph 324.

The department, therefore, concurs in your views that both the roofing paper and shingles in question are dutiable as manufactures in chief value of paper not specially provided for at the rate of 25 per cent ad valorem under paragraph 332 of the tariff act of October 3, 1913. You will be governed accordingly.

As it appears that roofing felt coated with a mineral substance and similar in appearance to the above roofing paper has been imported and returned as roofing felt under paragraph 320 at 5 per cent ad valorem, the above ruling will be applied as to the roofing paper only when imported or withdrawn from warehouse 30 days after the date hereof.

Respectfully, WM. P. MALBURN,
(104390.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36754.)

*Disinfection of hides, other animal by-products, and hay, straw, etc.*

Joint regulations of the Secretary of Agriculture and the Secretary of the Treasury governing the certification and disinfection of hides, hay, straw, etc.

TREASURY DEPARTMENT, *October 23, 1916.*

*To collectors and other officers of the customs:*

The appended joint regulations of the Secretary of Agriculture and the Secretary of the Treasury governing the certification and disinfection of hides, fleshings, hide cuttings, parings, and glue stock, sheepskins and goatskins and parts thereof, hair, wool, and other animal by-products, hay, straw, forage, or similar material offered for entry into the United States are hereby promulgated for your information and guidance.

(74465.) ANDREW J. PETERS, *Assistant Secretary.*

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UNITED STATES TREASURY DEPARTMENT AND DEPARTMENT OF AGRICULTURE.

REGULATIONS GOVERNING THE CERTIFICATION AND DISINFECTION OF HIDES, FLESHINGS, HIDE CUTTINGS, PARINGS, AND GLUE STOCK, SHEEPSKINS AND GOATSKINS AND PARTS THEREOF, HAIR, WOOL, AND OTHER ANIMAL BY-PRODUCTS, HAY, STRAW, FORAGE, OR SIMILAR MATERIAL OFFERED FOR ENTRY INTO THE UNITED STATES.

[Effective Jan. 1, 1917.]

WASHINGTON, D. C., *October 21, 1916.*

Under authority of the act of Congress approved October 3, 1913, entitled "An act to reduce tariff duties and to provide revenue for the Government, and for other purposes" (38 Stat., 114), and the act of Congress approved February 2,

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1903, entitled "An act to enable the Secretary of Agriculture to more effectually suppress and prevent the spread of contagious and infectious diseases of live stock, and for other purposes" (32 Stat., 791), the following regulations are issued for the purpose of preventing the introduction of anthrax, foot-and-mouth disease, and rinderpest from a foreign country into the United States.

*Regulation I.—Hides and skins.*

SECTION 1. All hides of neat cattle, calfskins, buffalo hides, sheepskins, goatskins, and deerskins offered for entry into the United States from any foreign country (except abattoir and hard, sun-dried hides and skins as hereinafter provided) must be accompanied by a certificate signed by the United States consular officer of the district from which such hides or skins are shipped, or by a certificate issued by the chief of the veterinary service or the duly authorized sanitary inspector of the country from which such hides or skins are shipped, authenticated by the said United States consular officer, stating that anthrax is not prevalent and that neither foot-and-mouth disease nor rinderpest exists in such district, or by a certificate signed by the said consular officer showing that such hides or skins have been disinfected by immersion for not less than 24 hours in a 1 to 1,000 bichloride of mercury solution.

SEC. 2. If such hides or skins (other than abattoir and hard, sun-dried hides and skins) offered for entry into the United States are certified, as required by section 1, to be from a district where anthrax is not prevalent, but in which either foot-and-mouth disease or rinderpest exists, they will be admitted if certified by the United States consular officer of the district from which shipped to have been disinfected by immersion, for not less than 30 minutes, either in a 1 to 1,000 bichloride of mercury solution or in a 5 per cent solution of carbolic acid.

SEC. 3. Such hides or skins (other than abattoir and hard, sun-dried hides and skins) if packed in bales the exterior surface of each of which is thoroughly whitewashed under consular supervision prior to shipment, may be imported without previous disinfection upon the conditions that they will be disinfected at the owner's expense after arrival at destination in the United States, that the destination is a tannery having proper facilities for disinfecting the same, that they will move from the port of entry only under customs seal, and that they will be disinfected at destination under the supervision of the Bureau of Animal Industry, (*a*) when certified as required by section 1 to be from a district where anthrax is not prevalent, by immersion in a 5 per cent solution of carbolic acid, or a 2 per cent solution of chloride of lime, or a 1 to 5,000 solution of bichloride of mercury, with not less than 24 hours exposure; or (*b*) when not certified in any of the forms aforesaid, by immersion in a 1 to 1,000 bichloride of mercury solution with not less than 48 hours' exposure, or in a 1 to 5,000 bichloride of mercury solution with not less than 6 days' exposure plus not less than 5 days in lime of the usual strength for dehairing.

SEC. 4. Hard, sun-dried hides and skins may be imported without disinfection if certified as required in section 1 to be from a district or districts where anthrax is not prevalent, if each bale or hide is distinctly marked for identification, each shipment showing invoice number, names and addresses of consignees and consignor, as such hard, sun-dried hides and skins so certified showing freedom from anthrax can be considered as having been disinfected by the process of curing and need not be submitted to any further treatment, or such hides or skins may be imported without being certified to be from a district where anthrax is not prevalent if accompanied by a consular certificate

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showing them to have been disinfected, prior to shipment, by immersion for not less than 24 hours in a 1 to 1,000 bichloride of mercury solution, or such hides and skins may be imported without any certification upon the conditions prescribed in section 3 for importations to be disinfected at destination in the United States by immersion in a 1 to 1,000 bichloride of mercury solution with not less than 48 hours exposure, or in a 1 to 5,000 bichloride of mercury solution with not less than six days' exposure plus not less than five days in lime of the usual strength for dehairing.

*Regulation II.—Abattoir hides and skins.*

Abattoir hides and skins taken from animals slaughtered in Sweden, Norway, Australia, New Zealand, Great Britain, Uruguay, and Argentine, when accompanied by a certificate of an official veterinarian of the country where such animals were slaughtered, showing that such hides or skins were taken from animals free from disease at the time of slaughter, may be imported into the United States without disinfection.

*Regulation III.—Glue stock.*

Fleshings, hide cuttings and parings, or glue stock, shall be subject to disinfection and certification under the requirements of these regulations the same as hides and skins, except that such fleshings, hide cuttings and parings, or glue stock, may be imported without disinfection if shown by a consular invoice used upon entry, or by a consular certificate, to have been sterilized by heat (not less than 200° F.) or by acidulation, or to have been lime dried after soaking for not less than seven days in a strong lime wash made by slacking quicklime in water in such proportion as to be of a creamy consistency, or to have been dried by exposure to the action of the sun and air for a sufficient time to render each piece of the hardness of a sun-dried hide, provided the consignee or his agent files a satisfactory bond or agreement that said materials and containers will be handled or sterilized in a manner acceptable to the Bureau of Animal Industry before distribution from the factory or establishment to which consigned.

*Regulation IV.—Bones, hoofs, and horns.*

SECTION 1. Bones, hoofs, and horns, which are clean, dry, and free from pieces of hide, flesh, or sinews, may be imported without restrictions other than a satisfactory agreement on the part of the consignee or his agent to destroy or sterilize the bags or containers thereof at destination.

SEC. 2. Bones, hoofs, and horns, with pieces of hides or tendons attached, and also horn piths, either will be subject to the requirements of regulation 3 or may be forwarded to a factory or other establishment in sealed cars after the bags or containers have been sprayed with lime wash under the supervision of an inspector of the Bureau of Animal Industry, provided the consignee or his agent files a satisfactory bond or agreement that such materials will be sterilized in an acceptable manner before distribution from the factory or other establishment to which shipped, and that the bags or containers thereof will be sterilized or destroyed.

*Regulation V.—Wool and hair.*

SECTION 1. Clipped wool may be imported in bales if accompanied by an affidavit of a competent authority of the district from which the wool is shipped, authenticated by the United States consul at the port of shipment, designating

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the bales by their markings, indicating the consignor, consignee, and number of the invoice, and stating that all the wool contained in such bales was clipped from live animals free from foot-and-mouth disease, rinderpest, and anthrax, and that the same has not been exposed to the infection of these diseases.

SEC. 2. Picked or pulled wool or hair may be imported if accompanied by a declaration of the exporter, authenticated by the United States consul at the port of shipment, to the effect that such wool or hair, designated in the manner provided in section 1 of this regulation for clipped wool, came from animals free from anthrax. The consignee or owner of such wool or hair or his agent shall be required to file a satisfactory bond or agreement assuring proper facilities of disinfection at the establishment to which the shipment is consigned, and that all of such wool or hair will be disinfected or sterilized by proper exposure to a temperature of not less than 200° F. prior to any transfer or reshipment from such establishment. If such wool or hair, when offered for entry, is unaccompanied by the above-mentioned declaration, its entry will be permitted upon the condition that the consignee or owner thereof or his agent files a satisfactory bond or agreement assuring proper facilities for disinfection at the establishment to which the shipment is consigned, and that all of such wool or hair will be disinfected or sterilized by proper exposure to a temperature of not less than 212° F. for at least 15 minutes prior to any transfer or reshipment from such establishment.

SEC. 3. Importation of abattoir pulled wool will be permitted without restrictions from any country maintaining a veterinary inspection system ascertained by the Secretary of Agriculture and certified by him to the Secretary of the Treasury, from time to time, to be the substantial equivalent of the veterinary inspection system maintained by the United States, when accompanied by a certificate signed by an official veterinary inspector of such country to the effect that said wool was procured from sheep slaughtered therein under Government inspection, and that in the process of wet pulling and drying it has been subjected to a temperature of not less than 200° F. Such certificate must indicate the number of bales, marks, names, and addresses of consignor and consignee, district of origin, date of shipment, invoice number, and vessel transporting.

SEC. 4. All wool and hair, unaccompanied by certificates, affidavits, and declarations herein provided, when permitted to be entered without such certificates, affidavits, and declarations, must be shipped from port of entry to destination in sealed cars after the bales or bundles have been whitewashed at such port of entry under the supervision of an inspector of the Bureau of Animal Industry, and the destination of such wool or hair must be a factory or establishment having satisfactory facilities for sterilizing or disinfecting the same in the manner provided by these regulations or as may be directed by the Chief of the Bureau of Animal Industry. The consignee, owner, or his agent will be required to file a satisfactory bond or agreement to fulfill all requirements as to shipment and disinfection or sterilization.

*Regulation VI.—Hay, straw, etc., and meats packed in hay or straw.*

SECTION 1. On account of the existence of foot-and-mouth disease in the countries of continental Europe and South America and the impracticability of disinfecting hay and straw used as the packing on meats offered for entry without injuring the meats for food purposes, the entry into the United States from any of those countries of any meats packed in hay or straw is prohibited.

SEC. 2. Bran, middlings, and mill feed may be imported from Argentina without being disinfected as prescribed in section 4, if accompanied by a certificate,

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signed by the United States consul of the district from which shipped, showing that such bran, middlings, or mill feed was conveyed by chutes directly from the mill in which produced into the vessels transporting the same to the United States.

SEC. 3. Because of lack of danger of the communication of disease through the importation of hay, straw, forage, and similar materials, including bran, middlings, or other mill feed originating in and transported directly from Great Britain, Ireland, the Channel Islands, Canada, and Mexico, such articles may be imported into the United States from those countries, as long as the above condition continues to exist, without being disinfected as prescribed in section 4.

SEC. 4. Except as otherwise provided in this regulation, all hay, straw, forage, or similar materials, including bran, middlings, or other mill feed, offered for importation from any foreign country, shall be disinfected in the manner prescribed by the Chief of the Bureau of Animal Industry at the expense of the owner before being unloaded from the vessel or conveyance bringing the same into any port of the United States, and when unloaded and landed shall be stored and held in quarantine for a period of not less than three months at some place acceptable to the Chief of the Bureau of Animal Industry and under directions prescribed by him.

*Regulation VII.—Canada.*

Because of the lack of danger of the introduction of disease into the United States through the importation of the articles enumerated in these regulations, originating in and transported directly from Canada, such articles may be imported from Canada, as long as the above condition continues to exist, without being disinfected or certified as prescribed by these regulations.

*Regulation VIII.—Products from diseased animals.*

Importation into the United States of any hides, skins, fleshings, hide cuttings, parings, and glue stock, hair, wool, or other animal products covered by these regulations, taken or removed from animals affected with anthrax, foot-and-mouth disease, or rinderpest, is prohibited.

*Regulation IX.—Disinfection of cars, boats, other vehicles, and premises.*

Cars, boats, other vehicles, yards, and premises which have been used in the transportation, handling, and storing of uncertified or nondisinfected imported hides, skins and parts thereof, hair, wool, and other animal by-products, hay, straw, forage, or similar material permitted entry subject to disinfection, shall be cleaned and disinfected, under the supervision of the Bureau of Animal Industry, subject to the conditions and in accordance with the requirements of the regulations of the United States Department of Agriculture, contained in B. A. I. Order 245, governing the disinfection of cars, boats, other vehicles, yards, and premises used in interstate movement of live stock, except that all such cars, boats, other vehicles, yards, and premises, storage places used in the transportation, handling, and storing of any of said articles uncertified for nonprevalence of anthrax, or which have not been disinfected against anthrax, shall be disinfected with a 1 to 1,000 bichloride of mercury solution. The permitted disinfectants specified in the said B. A. I. Order 245 may be used in disinfection against the other communicable diseases.

Treasury Department Circular No. 23, dated May 2, 1910, and all amendments thereto, and B. A. I. Order 129, dated October 4, 1904, and all amendments thereto, shall cease to be effective on and after January 1, 1917, on and

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after which date this order, which for purposes of identification is designated as United States Treasury Department and Department of Agriculture joint order No. 1, shall become and be effective until otherwise ordered.

WM. P. MALBURN, *Acting Secretary of the Treasury.*
D. F. HOUSTON, *Secretary of Agriculture.*

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## (T. D. 36755.)

*Suspension of drawbacks.*

T. D. 35162 of February 24, 1915, suspending certain Treasury decisions providing for the payment of drawback on articles manufactured with the use of imported materials extended.

TREASURY DEPARTMENT, *October 27, 1916.*

*To collectors of customs and others concerned:*

The provisions of T. D. 35162, dated February 24, 1915, suspending certain Treasury decisions specified therein allowing drawback on various articles manufactured with the use of imported materials, are hereby extended to cover the following decisions.

WM. P. MALBURN, *Assistant Secretary.*

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| T. D. | Name of claimant. | T. D. | Name of claimant. |
|---|---|---|---|
| 26434 | Baker Bros. Lumber Co. | 28473 | The Lautz Co. |
| 26102 | A. L. Barber Asphalt Co. | 31050 | Mariana Co. |
| 29463 | F. W. Braun. | 32099 | Michelin Tire Co. |
| 30736 | Do. | 33090 | Do. |
| 29552 | The Bethlehem Steel Co. | 33843 | Do. |
| 29869 | Do. | 31222 | Patton Paint Co. |
| 30536 | Do. | 25520 | Do. |
| 31055 | Do. | 31154 | Pacific Wire Rope Co. |
| 31438 | Do. | 22398 | The Preservaline Manufacturing Co. |
| 29365 | Do. | 27077 | Runkel Bros. |
| 24689 | DeHaven Manufacturing Co. | 22827 | M. A. Seed Dry Plate Co. |
| 27079 | Do. | 19670 | Selby Smelting & Lead Co. |
| 30955 | Eddystone Manufacturing Co. | 24010 | Do. |
| 20569 | Evans Marble Co. | 25777 | Do. |
| 24893 | Falcon Packing Co. | 25950 | Do. |
| 24955 | Do. | 24481 | P. M. Sharples. |
| 31646 | O. O. Friedlander. | 27901 | Shultz Belting Co. |
| 29685 | Gerstendorfer Bros. | 24421 | Stanley Works. |
| 25206 | Do. | 24571 | Do. |
| 25836 | Do. | 31889 | Do. |
| 32325 | Do. | 29737 | Surpass Leather Co. |
| 30088 | Gordon & Dilworth. | 29281 | Swift & Co. |
| 30137 | Do. | 24007 | Do. |
| 30576 | Do. | 24252 | Taussig Co. |
| 24553 | Hale & Kilburn Manufacturing Co. | 26533 | Theodore Tiedemann & Son. |
| 25483 | Do. | 30285 | Union Bag & Paper Co. |
| 28359 | Do. | 24028 | Wheeler Condenser & Engineering Co. |
| 29584 | Keystone View Co. | 25670 | Do. |
| 29892 | Keuffel & Esser Co. | | |
| 31327 | Do. | | |

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(T. D. 36756.)

*Drawback on olive-oil salad dressing.*

**Drawback allowed on olive-oil salad dressing manufactured by the Pompeian Co., of Baltimore, Md., with the use in part of imported olive oil.**

TREASURY DEPARTMENT, *October 27, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on olive-oil salad dressing manufactured by the Pompeian Co., of Baltimore, Md., in part with the use of imported olive oil.

A manufacturing record shall be kept in accordance with the sworn statement of the manufacturers, dated October 11, 1916, which is transmitted herewith for filing in your office, which will show, in addition to the usual import data, the quantity of olive oil used in the manufacture of each lot of salad dressing for exportation with benefit of drawback and the quantity of salad dressing produced.

The allowance shall not exceed the quantity of olive oil appearing in the exported salad dressing, as shown by the manufacturing record, an abstract of which shall be filed with the drawback entry.

Drawback may be allowed under these regulations on olive-oil salad dressing exported on and after September 29, 1916.

Respectfully, WM. P. MALBURN,
(96329-1.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Baltimore, Md.*

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(T. D. 36757.)

*Drawback on preserved canned pears.*

**T. D. 34839 of October 19, 1914, providing for the payment of drawback on preserved canned pears manufactured by the Curtice Bros. Co., of Rochester, N. Y., amended to permit the filing of supplemental sworn statements.**

TREASURY DEPARTMENT, *October 27, 1916.*

SIR: T. D. 34839, dated October 19, 1914, providing for the payment of drawback on preserved canned pears manufactured by the Curtice Bros. Co., of Rochester, N. Y., with the use of refined sugar produced from imported raw sugar is hereby amended to allow the filing of supplemental sworn statements covering additional brands of canned pears or pears packed in other sized containers than those specified, under which, after verification, drawback may be allowed on refined sugar produced from imported raw sugar used in the canning and packing of pears.

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A supplemental sworn statement of the company named, dated October 6, 1916, covering canned Bartlett pears, No. 2½ CB and No. 2½ Monroe brands is transmitted herewith for filing in your office.

Respectfully, WM. P. MALBURN,
(102799.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Buffalo, N. Y.*

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(T. D. 36758.)

*Beef weasands.*

Appeal directed from decision of the Board of United States General Appraisers of October 3, 1916, Abstract 40231, involving the classification of certain "beef weasands."

TREASURY DEPARTMENT, *October 28, 1916.*

SIR: I having to acknowledge the receipt of your letter of the 23d instant, inviting attention to the decision of the Board of United States General Appraisers of October 3, 1916, Abstract 40231, wherein certain "beef weasands," which had been assessed with duty at the rate of 10 per cent ad valorem as nonenumerated unmanufactured articles under paragraph 385 of the tariff act of 1913, were held by the board to be free of duty under paragraph 419 of the said act.

In accordance with your recommendation, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, WM. P. MALBURN,
(102343.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

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(T. D. 36759.)

*Containers.*

Appeal directed from decision of the Board of United States General Appraisers of September 29, 1916, G. A. 7969 (T. D. 36703), involving the question of the assessment of additional duty on certain carbonic-acid gas and capsules containing the same.

TREASURY DEPARTMENT, *October 30, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 21st instant, inviting attention to the decision of the Board of United States General Appraisers of September 29, 1916, G. A. 7969 (T. D. 36703), involving the question of the assessment of additional duty on certain carbonic-acid gas and capsules containing the same.

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It appears that because of an advance by the appraiser on the capsules, the value of the entire shipment was increased and additional duty was assessed, but it was held by the board that no additional duty accrued, on the theory that the capsules were containers not the subject of appraisement.

You are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, WM. P. MALBURN,
(101336.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

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(T. D. 36760.)

*Manifests.*

Manifests covering merchandise in transit through the United States to be reported and recorded—Amendment to Article 700 of the Customs Regulations of 1915.

TREASURY DEPARTMENT, *October 30, 1916.*

*To collectors and other officers of the customs:*

Article 700 of the Customs Regulations of 1915 is hereby amended by the insertion of the following paragraph after the word "destination" at the end of the second paragraph:

"Such manifests shall be reported by the ports of first arrival in the United States separately in the schedule prescribed in article 679 of these regulations, on customs form No. 5047, modified to suit the circumstances, and a similar report shall be made by the ports of destination in the schedule prescribed in article 683 of these regulations on customs form No. 5049, the carbon copy of the schedule in each instance to be retained in the book as the office record."

(92819.) WM. P. MALBURN, *Assistant Secretary.*

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(T. D. 36761.)

*Disinfection of hides.*

Certificates may be issued by representatives of other Governments who are temporarily in charge of United States consular offices in Mexico.

TREASURY DEPARTMENT, *October 30, 1916.*

*To collectors of customs:*

In accordance with an arrangement made with the Department of Agriculture you are informed that certificates accompanying hides from Mexico may be issued by representatives of other governments who are temporarily in charge of United States consular offices in



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Mexico, provided it is shown on each certificate that such representatives are acting for United States consular officers during their absence from their respective stations in Mexico.

(74465.) WM. P. MALBURN, *Assistant Secretary.*

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(T. D. 36762.)

*Tin disks—American goods returned.*

Appeal directed from decision of the Board of United States General Appraisers of September 25, 1916, Abstract 40192, involving the classification of certain tin disks.

TREASURY DEPARTMENT, *October 30, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 21st instant, inviting attention to the decision of the Board of United States General Appraisers of September 25, 1916, Abstract 40192 (protests 721812 and 727149), wherein certain tin disks produced abroad from American tinplate, which disks had been assessed with duty under paragraph 199 of the tariff act of August 5, 1909, were held by the board to be free of duty as American goods returned under paragraph 500 of the said act.

You are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, so far as it relates to the two protests above mentioned, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, WM. P. MALBURN,

(102643) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

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(T. D. 36763—G. A. 7975.)

*Rosaries.*

Rosaries composed in chief value of seed beads are properly dutiable at the rate of 50 per cent ad valorem under the provision in paragraph 333 of the act of 1913 for "articles not embroidered nor appliquéd, * * * composed * * * in chief value of beads, * * * made of glass * * * or other material." This provision covers all such merchandise in chief value of beads of whatever material.—American Bead Co. *v.* United States (7 Ct. Cust. Appls., —; T. D. 36259) cited and followed.

United States General Appraisers, New York, October 23, 1916.

In the matter of protest 739313 of Benziger Bros. against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

*Thaddeus S. Sharretts* for the importers.

*Bert Hanson*, Assistant Attorney General, for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

FISCHER, *General Appraiser:* The report of the local appraiser herein is as follows:

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The merchandise marked "A" consists of statuettes, holy-water fonts, and paper weights composed in chief value of metal, silver plated or gold plated. It was returned for duty as articles or wares plated with gold or silver at 50 per cent ad valorem under the second part of paragraph 167.

Items marked "B" consist of a wood cross with silver corpus, the latter the component material of chief value. It was returned for duty as a manufacture of silver chief value at 50 per cent ad valorem under the first part of said paragraph.

Items marked "C" consist of rosaries composed of seed beads and metal, the former the component material of chief value. It was returned for duty as articles in chief value of beads at 50 per cent ad valorem under paragraph 333. In view of department's instructions in T. D. 34019 it would now be returned as a nonenumerated manufactured article at 15 per cent ad valorem under paragraph 385, act of 1913, as amended.

The merchandise marked "D" is silver-plated medals used for automobiles, returned at 50 per cent under the second part of paragraph 167.

The merchandise marked "E" is silver medals and crosses, articles carried on the person, valued at over 20 cents per dozen pieces, and should have been returned for duty at 60 per cent ad valorem under paragraph 358, as amended.

Items marked "F" are composed in chief value of leather and should have been returned at 30 per cent ad valorem under paragraph 360. As the protest does not come under this paragraph the return is not amended.

And the collector's letter of transmittal, indorsed upon the protest, reads in part as follows:

From the appraiser's special report herewith the rosaries indicated on the invoice by the letter "C" would appear to be dutiable at 15 per cent ad valorem under paragraph 385, as claimed in the protest, and if authorized, reliquidation will be made accordingly after the remaining claims are disposed of. (Note T. D. 33847.)

Both of these communications were offered and received in evidence, and the facts therein recited are uncontradicted. Upon such statement of undisputed facts, which we hereby adopt as our findings, we hold as matter of law that this protest must be and hereby is in all respects overruled. This conclusion necessarily means that the views of the Treasury Department expressed in its letter of instructions addressed to the collector of customs, New York, dated December 24, 1913, and published as T. D. 34019, relative to the proper classification of rosaries under the present tariff act, are not concurred in by this board.

Paragraph 333 of the act of 1913 provides for—

Beads and spangles of all kinds, including imitation pearl beads, not threaded or strung, or strung loosely on thread for facility in transportation only, 35 per centum ad valorem; curtains, *and other articles* not embroidered nor appliquéd and not specially provided for in this section, composed wholly or in chief value of beads or spangles made of glass or paste, gelatin, metal, *or other material*, 50 per centum ad valorem.

Hence, inasmuch as the rosaries marked "C" on the invoice covered by this protest are composed in chief value of seed beads,

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they are clearly dutiable at the rate of 50 per cent ad valorem under said paragraph 333.

This conclusion is inevitable in view of the construction placed upon said paragraph by the United States Court of Customs Appeals in American Bead Co. *v.* United States (7 Ct. Cust. Appls., —; T. D. 36259), a case which involved the tariff classification of certain beaded necklaces which were classified by the collector as articles commonly known as jewelry under paragraph 356 of said act, and which were claimed by the importers to have been properly dutiable as beaded articles under paragraph 333 of said act. In his opinion reversing the decision of the collector, Judge De Vries, speaking for the court, said:

> While the language of the "jewelry" paragraph, 356 of the act of 1913, is conspicuously narrowed in material particulars from the scope of its predecessor paragraph 448 of the act of 1909, the provisions of the here competing paragraph, 333 of the act of 1913, providing for beads and beaded articles is enlarged beyond its predecessor paragraph, 421 of the act of 1909. This patent fact leads us to the same and fortifies the conclusion reached with reference to the relative specificity of paragraphs 333 and 356 by this court in comparing paragraphs 333 and 358, this act, in Loewenthal & Co. *et al.* v. United States (6 Ct. Cust. Appls., 209; T. D. 35464). We therein said:
>
> Bearing in mind, therefore, the amended act, and reading together all the amending provisions, we think the congressional purpose clear to provide by paragraph 333 for all articles in chief value of beads * * *.
>
> The court views that this was intended as an exhaustive provision as to its subject matter, (1) beads and spangles, (2) articles composed wholly or in chief value of beads and spangles, only to be invaded by some other clearly and more specifically expressed intention of Congress.

In reaching our conclusion in this case, we are not unmindful of the claim alleged in other protests pending before this board to the effect that the provisions in question in paragraph 333 were intended not only to exclude therefrom beaded articles which are embroidered or appliquéd, but likewise those which are susceptible of being embroidered or appliquéd, a contention evidently advanced as a result of the board's decision, G. A. 7889 (T. D. 36343), in the matter of protests 746572, etc., of Morimura Bros., wherein the scope of said provision was held to be limited to beaded articles not embroidered nor appliquéd nor susceptible of being embroidered or appliquéd.

Our reading of the paragraph is fortified by the court's rulings hereinbefore cited. The all-embracive and comprehensive language of the paragraph is plainly indicative of a congressional purpose to include therewithin any and all articles composed in chief value of beads of whatever material, with the single exception of those which are embroidered or appliquéd.

To adopt a construction which in effect holds that the words "any other articles not embroidered nor appliquéd," in said paragraph, should be interpreted as though written "any other articles not em-

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broidered nor appliquéd, nor susceptible of being embroidered or appliquéd," would plainly operate to exclude from the paragraph all beaded necklaces, fringes, and like articles composed of permanently strung beads where the same obviously are incapable of being embroidered or appliquéd. Any such interpretation of the language of the paragraph would necessarily imply that the court erred in classifying thereunder the particular beaded necklaces involved in the case of American Bead Co. *v.* United States, *supra*, and that Congress intended to restrict rather than extend the operation and scope of said paragraph. We are unable to accept any such view of the law.

The Treasury Department now concedes error in its views as expressed in T. D. 34019 concerning the operation and scope of the present tariff provision for beaded articles, since its latest published expressions of opinion on the subject, as set forth in its letter of instructions dated September 18, 1916, addressed to the collector of customs at New York and promulgated as T. D. 36678, are in harmony with the interpretation of said provisions as herein determined by this board.

The protest is in all respects overruled and the decision of the collector as to each class of merchandise involved herein is affirmed.

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(T. D. 36764—G. A. 7976.)

*Packing charges.*

PACKING CHARGES—QUESTION OF FACT FOR COLLECTOR.

In passing upon an importation of feathers sewn into paper boxes or cartons, the appraiser approved the *per se* value of the feathers as entered, but recommended to the collector an addition to the invoice value of the cartons. This suggestion was without legal force as being beyond the jurisdiction of the appraiser under the rule of United States *v.* Spingarn (5 Ct. Cust. Appls., 2; T. D. 34002), although the collector was at liberty to consider it in an advisory way. The cost of packing is to be ascertained by the collector as a question of fact, and the correctness of his finding may be attacked under protest and the amount determined by evidence before the board.

United States General Appraisers, New York, October 23, 1916.

In the matter of protest 797415 of A. L. Simon & Co. against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

*Brooks & Brooks* (*Ernest F. A. Place* of counsel) for the importers.

*Bert Hanson*, Assistant Attorney General (*Samuel Isenschmid*, special attorney), for the United States.

Before Board 3 (WAITE and HAY, General Appraisers).

WAITE, *General Appraiser:* The merchandise in this case consists of feathers packed in cartons, the feathers being sewed to the

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inside of the cartons or boxes. The packing charges, including the cartons, are itemized on the invoice at a value of 74 and 76 centimes per carton, depending upon the size and shape of the carton. The appraiser approved the value of the merchandise itself as stated in the invoice and as entered. He apparently, however, recommended the addition of 25 centimes per carton, which recommendation the collector has acted upon in assessing duty, this being added on the theory that the cost of sewing the feathers inside the boxes was not included in the cost of packing, as stated on the invoice. Evidently the action of the appraiser was considered by the importers to be an addition to the dutiable value of the goods, for they filed a notice of appeal to reappraisement. The single general appraiser made a finding in the following language.

There being no question as to the *per se* value of the merchandise, I have nothing to do with the value of the packing.

Appeal appears then to have been taken to a board of three general appraisers. The board before whom the proceeding was brought said:

The general appraiser having made no finding as to the market value of the merchandise in this case, the Board of General Appraisers has no jurisdiction. The case is therefore dismissed.

Liquidation was made, however, upon the basis of the appraiser's recommendation that 25 centimes per carton should be added.

The importers protest in the following language:

Duty should have been assessed on the invoiced and entered value, or cost of the cartons and packing.

The case came on to be heard before this board and testimony was taken on behalf of the importers. None seems to have been offered on the part of the Government, so the case on behalf of the Government rests upon the report of the collector, which is in the following language:

The feathers contained in this importation were entered in accordance with the terms of the invoice in which the *per se* cost of the charge is separately stated. The appraiser approved the *per se* value of the merchandise as entered, but reported a value of 25 centimes per carton for sewing the feathers to the cartons. This office adopted as the appraised value the *per se* cost plus the charge referred to by the appraiser and assessed duty thereon at the rate of 60 per cent under paragraph 347. Note appraiser's special report herewith.

It is apparent from this report that no addition was made by the appraiser to the value of the goods. His suggestion as to the addition to the value of the cartons is without force as being beyond his jurisdiction, he having no authority under the law as laid down in United States *v.* Spingarn (5 Ct. Cust. Appls., 2; T. D. 34002) to appraise the costs and charges, which included, of course, the cost of the cartons and the sewing of the feathers therein. The collector

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was at liberty to consider the suggestion of the appraiser as of an advisory nature, and give it such weight as he saw fit in ascertaining the amount of costs and charges upon which duty should be assessed. Note in this connection the case of Binney & Smith Co., G. A. 7595 (T. D. 34726).

We conclude, after a review of the whole record, that the question is to be determined as a question of fact, with the finding of the collector and the presumption of correctness which attends his finding upon one side, and the testimony of the witnesses for the importers upon the other. We do not think we have any right to consider the return of the appraiser as evidence in this case, and, of course, under the law as it now stands he was acting beyond his jurisdiction in assuming to assess a value upon the cartons.

We think it is clear from the testimony that the 25 centimes was included in the amounts mentioned in the invoice, to wit, 74 and 76 centimes; and it further appears that the 25 centimes did not consist entirely of the cost of sewing the feathers into the cartons, but was made up of 15 centimes per carton for sewing the feathers into the boxes and 10 centimes for paper used either on the inside of the carton or as wrapping paper on the outside. The testimony further shows that the actual cost of the cartons alone was 49 and 51 centimes each. Admitting that the further cost of packing was 25 centimes, over which there seems to be no dispute, the total packing charges would be, as invoiced, either 74 or 76 centimes per carton.

The principles governing in this case were set forth, we think, in the case of Morimura Bros., Abstract 37271, where the board said:

> Assuming that in the case at bar the collector adopted the appraiser's statement as to the value of the packing charges, and that that was equivalent to the discharge of his function as indicated by United States *v.* Spingarn, *supra*, his action is in no event final. There is an appeal therefrom, not only in the ascertainment of the amount of duty, but also in connection with the costs and charges. *In re* American Express Co., G. A. 6552 (T. D. 27962).

In conclusion we adopt the language used by the board in Abstract 37271, *supra:*

> The collector has no power to appraise or place a value on the cost of packing. He must simply ascertain it and liquidate the entry accordingly. Assumably he did that under such evidence as was before him, but the evidence before us clearly shows that the cost of packing upon which the liquidation was made was excessive. The protest is therefore sustained and the collector directed to reliquidate the entry, assessing duty upon the packing charges as stated in the invoice.

Under the facts in this case and on authority of the case last above cited, the protest is sustained and reliquidation will be made upon the packing charges as stated in the invoice, 74 and 76 centimes per carton, respectively. Note Downing & Co.'s case, G. A. 7969 (T. D. 36703).

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(T. D. 36765—G. A. 7977.)

*Chalk drawings.*

CHALK DRAWINGS, COPIES OF OLD MASTERS, NOT ORIGINAL DRAWINGS.

Copies of the old masters made with chalk crayons and pastels are not "original drawings" within the meaning of the provision in paragraph 652, tariff act of 1913, granting free entry to "original drawings." The fact that the artist's method of producing these pictures is unique and original is not sufficient to characterize his work as "original drawings," inasmuch as the subjects are in no sense original.

United States General Appraisers, New York, October 23, 1916.

In the matter of protest 799458 of American Express Co. against the assessment of duty by the collector of customs at the port of Boston.

[Affirmed.]

*William E. Waterhouse* for the importers.

*Bert Hanson*, Assistant Attorney General (*Frank P. Wilson* and *Samuel Isenschmid*, special attorneys), for the United States.

Before Board 3 (WAITE and HAY, General Appraisers).

WAITE, *General Appraiser:* The importation in this case is invoiced as 7 drawings. They were assessed under paragraph 376, tariff act of 1913, and are claimed to be free of duty under paragraph 652. The paragraphs, in so far as pertinent, read as follows:

376. Works of art, including paintings in oil or water colors, pastels, pen and ink drawings, or copies, replicas, or reproductions of any of the same, * * * 15 per centum ad valorem.

652. Original paintings in oil, mineral, water, or other colors, pastels, original drawings and sketches in pen and ink or pencil and water colors * * *; and the words "painting" and "sculpture" and "statuary" as used in this paragraph shall not be understood to include any articles of utility, nor such as are made wholly or in part by stenciling or any other mechanical process; * * *.

There is no question but that these drawings are works of art. The only question to be decided is whether they are original drawings. That they are drawings we think is conceded by all.

The record shows that they are drawn with chalk crayons and pastels by one A. Dickson Patterson. It is also clear from the record that they are not made "wholly or in part by stenciling or any other mechanical process." There is on file a booklet entitled, "The Chalk Drawings of A. Dickson Patterson," to which reference is made by counsel for the Government and also by the importers, and from which we quote with reference to the method of producing these drawings and for a description of them. We learn from this work that the style of Mr. Patterson is peculiarly his own. We may say here that these pictures are made from originals by the great masters, such as Velasquez, Rembrandt, Van Dyck, Romney, Greuze, and others, and it is said that Mr. Patterson confines himself principally to the reproduction of heads. The booklet above referred to was filed, as we understand, by the importers, and therefore must be con-

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sidered accurate in its statements with reference to the pictures. We note that it says:

The handling or treatment by Mr. Patterson varies with the characteristics of the original painter's work in general. Thus, we have suggestions of the grace of Romney, the tender delicacy of Greuze, or the rugged strength of Rembrandt.

Reference is also made in the booklet to a critique by Mr. Charles H. Caffin, writer on art and author of a standard work called "How to Study Pictures," wherein he characterized the work of Mr. Patterson as "drawings from the pictures of old masters." He further says:

It is the head which chiefly occupies his attention, and he treats it with the freedom and the conscientiousness of a translator bent on interpreting its essentials into the very different language of his own medium. For, as he uses the chalk, it is with the intention of conveying the spirit rather than the concreteness of the original.

Not that he fails to reproduce the actual resemblance of the original. On the contrary, one after the other of these drawings brings back to one a vivid memory of the picture from which it was done.

Mr. Caffin also refers to the drawings as "a novel form of reproduction."

The artist has filed with us a memorandum in the shape of a letter in which he says:

It will be understood that the drawings are taken after the originals of paintings, chiefly those by famous masters, which are seen in public and private galleries. But they do not represent the paintings as they stand. Their object is to convey a recollection of the painting, as would be done by certain forms of reproduction, but in an entirely different way. Their medium are the common red and black chalks, with an occasional use of hard pastel. * * *

It is in the manner of the translation from the oil medium into that of chalks that the originality and merit of the production lies.

It would appear, then, that these drawings are really reproductions or copies of the old masters. It can not be denied that the artist at the time of their production had the old masters' work before him, and the value and excellence of his work depend upon the accuracy with which he reproduces or copies the outlines and salient characteristics of the pictures, so that one would recognize at a glance that the drawings are "from the old masters."

The Board of General Appraisers, in G. A. 6255 (T. D. 26987), said:

What we call originals are copied either from nature or from forms which have taken shape in the mind of the artist, induced by actual things idealized and perfected through his imagination.

The pictures in question are certainly not copied from nature. Neither are they from visions or forms which have taken shape in the mind of the artist as his original conception. All that is claimed in the way of originality is the method of producing the representation or copy, in doing which the artist has drawn upon his artistic

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ability to so illuminate or glorify the picture as to make it, one may say, striking, alive, and attractive to the observer. If these can be said to be originals, then the classification of the statute with reference to replicas, reproductions, and copies must be abandoned. To concede the claim made here would be to hold that all replicas, reproductions, and copies are originals. Originality, to satisfy the requirement of the statute, must extend to the thought object or conception of the artist; in other words, the vision which is interpreted and placed upon the canvas must be original with the painter. It necessarily follows that the work must be his work. That he has a new and original method is not sufficient basis for the claim of originality when the conception of the picture itself, as in this case, is the work of another. It is not claimed here that there is any originality on the part of the artist, so far as the lines and form of the pictures are concerned, but that they are original only in the method of production.

We are therefore of the opinion that these pictures can not be said to be "original drawings" within the meaning of that term as used in paragraph 652. The protest is overruled. Note the case of Baumgarten & Co., G. A. 7760 (T. D. 35597).

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(T. D. 36766—G. A. 7978.)

*Melba sauce.*

1. MELBA SAUCE—FRUITS, PRESERVED—SAUCES.

A preparation known as Melba sauce, consisting of the pulp of the raspberry, together with its juice and added sugar, and containing less than 10 per cent of alcohol, and which is used as a sauce on peaches and pears, is not dutiable under the provision in paragraph 201, tariff act of 1913, for "sauces of all kinds," but under paragraph 217, providing for "fruits of all kinds preserved or packed in sugar, or having sugar added thereto, or preserved or packed in * * * their own juices, if containing * * * not over 10 per centum of alcohol."

2. SAME—"SAUCES OF ALL KINDS."

The provision in paragraph 201, tariff act of 1913, for "sauces of all kinds" is intended to cover such sauce as is used as a relish on meat and vegetables, and not fruit sauces used as a dessert.—Meyer & Lange's case, G. A. 7825 (T. D. 35950) followed.

United States General Appraisers, New York, October 23, 1916.

In the matter of protest 800648 of Meyer & Lange against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

*Strauss & Hedges* (*Jacob L. Klingaman* of counsel) for the importers.

*Bert Hanson*, Assistant Attorney General (*Samuel Isenschmid*, special attorney), for the United States.

Before Board 3 (WAITE and HAY, General Appraisers).

WAITE, *General Appraiser:* The commodity in question here is described as Melba sauce. It was assessed at 25 per cent ad valorem

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under the provision in paragraph 201, tariff act of 1913, for "sauces of all kinds, not specially provided for in this section." It is claimed to be dutiable at 20 per cent ad valorem under that part of paragraph 217 which reads as follows:

217. * * * Comfits, sweetmeats, and fruits of all kinds preserved or packed in sugar, or having sugar added thereto, or preserved or packed in molasses, spirits, or their own juices, if containing no alcohol, or containing not over 10 per centum of alcohol, 20 per centum ad valorem; * * *.

Melba sauce was passed upon by the board in the case of Meyer & Lange, G. A. 7825 (T. D. 35950) and held to be dutiable under the provision of paragraph 217 above quoted. The Government appealed the case, and the importers consented to an order of reversal because the record failed to show that the merchandise contained less than 10 per cent of alcohol.

In this case the commodity has been identified with that under consideration in G. A. 7825, *supra*, where it was described as a thick, pulpy substance with a raspberry flavor. The board said:

We judge it is the pulp of the raspberry, together with its juice and probably added sugar. The seeds of the berry seem to have been extracted. The substance flows readily and is of about the same consistency as a thin jam. It is in a bottle, which is labeled as containing 9½ liquid ounces, and has upon its outer surface a label containing the following: "Sauce for peaches Melba, a special preparation, with raspberry juice for peaches and pears, a la Melba."

At the hearing in the case now before us an examiner was sworn and testified with reference to the identity of the commodity with that passed upon in the above-cited case and as to the amount of alcohol. There seems to have been no testimony introduced showing that the amount of alcohol is greater than 10 per cent. The witness was asked:

Q. Are you able to state whether or not it contains alcohol?—A. An old sample would develop alcohol in it. It does not contain alcohol as fresh except possibly a trace.

Q. As imported?—A. Yes.

Q. By "a trace" you mean approximately what in percentage? Would you mean less than 10 per cent?—A. Oh, 1 per cent or less probably.

His judgment seems to have been based upon his examination of the article and his experience in handling that kind of a commodity. We conclude, therefore, that the question of the amount of alcohol has been settled in this case, and that there is less than 10 per cent. That being so, we think the present case is governed by the decision of the board above referred to, G. A. 7825 (T. D. 35950), wherein the board used the following language, which we here adhere to:

We do not think paragraph 201 is intended to provide for all sauce or sauces. It would be absurd, in our judgment, to classify under that paragraph apple sauce, or plum sauce, or any other sauce used as a dessert. It is intended, we

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think, to cover such sauces as are used as relishes upon meat and vegetables, such as would contain spices and salt and have a pungent taste, possibly with an acidity beyond and different from that found in fruit sauce used as desserts.

Following the above case, we sustain the protest.

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(T. D. 36767—G. A. 7979.)

*Handmade copying papers.*

The provision in paragraph 326, act of 1913, for "handmade paper" is more specific than that for "copying paper" in paragraph 323 of said act. Hence, handmade copying papers are properly classifiable under the former paragraph, as claimed in the protests, rather than under the latter, as classified by the collector.—American Trading Co. *v.* United States (2 Ct. Cust. Appls., 237; T. D. 31972) cited and followed.

United States General Appraisers, New York, October 25, 1916.

In the matter of protests 733062, etc., of American Trading Co. against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

*Comstock & Washburn* (*George J. Puckhafer* of counsel) for the importers.

*Bert Hanson*, Assistant Attorney General (*Thomas J. Doherty*, *Luke Lamb*, and *Martin T. Baldwin*, special attorneys), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

FISCHER, *General Appraiser:* The merchandise in question consists of handmade copying papers. Duty was levied thereon at the rate of 30 per cent ad valorem under the provision in paragraph 323 of the act of 1913 for "papers commonly known as copying paper," and it is claimed that said merchandise is properly dutiable at but 25 per cent ad valorem under the provision in paragraph 326 of said act for "handmade paper and paper commercially known as handmade paper and machine handmade paper."

In the case of American Trading Co. *v.* United States (2 Ct. Cust. Appls., 237; T. D. 31972) the United States Court of Customs Appeals held the provision in the act of 1897 for "handmade paper" to be more specific than that for "printing paper" and said:

The term "handmade" as applied to paper is, we think, precise, explicit, specific, and controlling in this case. The word is used without any modifying language, except as to the weight per ream, and nothing else is found in the paragraph to suggest that any kind or class of handmade paper shall be exempted from its provisions.

But counsel for the Government here insists that the court's ruling is not necessarily controlling in the present case; that the provision for copying paper, signifying as it does a distinct use for the paper so designated, is a narrower and more specific provision than that for handmade papers, in that the latter expression

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does not indicate or suggest to the mind any particular use for which such papers might be employed or are intended to be applied. We are referred to several authorities alleged to support the Government's contention.

However, inasmuch as the ruling made in the case of American Trading Co. *v.* United States, *supra*, seems to constitute the latest expression of the court's views upon the subject, we deem it to be here controlling. There, as here, the provision for handmade paper did not signify any particular use, whereas those for printing paper and for copying papers, respectively, are unquestionably limited by their very terms to papers having certain definite and specific uses. Nevertheless, the court held that the provision for handmade paper took precedence over that for "printing paper," and we can see no reason why that ruling of the court is not equally decisive of the issue here presented. As observed by the court, the provision for handmade paper is precise, explicit, and controlling, and is a specific designation of a certain class of papers comprehended from the standpoint of original manufacture.

Inasmuch, therefore, as it is herein conceded that the paper in question is handmade, we hereby hold it to be properly dutiable as such at the rate of 25 per cent ad valorem under paragraph 326. That claim in each protest is accordingly sustained and the decision of the collector classifying said paper under paragraph 323 is in each instance reversed. In all other respects, however, the protests are overruled.

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(T. D. 36768—G. A. 7980.)

*Steel rings—Parts of fishing tackle.*

Split-steel rings suitable for use in the manufacture of fishing tackle, but requiring that they be copper plated and burnished before they are considered fully finished for such use, are properly dutiable at the rate of 15 per cent ad valorem under paragraph 114, act of 1913, as manufactures of wire, rather than at the rate of 30 per cent under paragraph 136 of said act as parts of fishing tackle.—Fenton *v.* United States (1 Ct. Cust. Appls., 529; T. D. 31546) cited and followed.

United States General Appraisers, New York, October 25, 1916.

In the matter of protests 771835, etc., of the Enterprise Manufacturing Co. against the assessment of duty by the collector of customs at the port of Cleveland.

[Reversed.]

*Curie, Smith & Maxwell* (*Albert McC. Barnes* of counsel) for the importers.

*Bert Hanson*, Assistant Attorney General (*Martin T. Baldwin*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

FISCHER, *General Appraiser:* The merchandise in question consists of split-steel rings used in the manufacture of fishing tackle.

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Duty was levied thereon at the rate of 30 per cent ad valorem under the provision in paragraph 136 of the act of 1913 for "fishing tackle or parts thereof," and they are claimed to be properly dutiable at the rate of 15 per cent ad valorem under paragraph 114 as articles made of wire, or at the rate of 20 per cent ad valorem under paragraph 167 of said act as manufactures of metal not specially provided for.

It appears from the testimony that these rings are imported in different sizes; that they are made from steel wire and are used by the importers in the manufacture of fishing tackle, sometimes to join the fishing hook to the shaft, or to the fly, or to attach the shaft to a swivel in order that the hook, or the fly, or the spinner, as the case may be, may hang loosely. In fact, as stated by one of the witnesses, wherever a ring is required in connection with fishing tackle generally these importers invariably make use of these split-steel rings, but only after the same have been copper plated and burnished; that until they are so treated the rings are never employed by the importers in the manufacture of fishing tackle, although they are sometimes sold by them to others precisely in the condition in which they are imported, that is, without being first copper plated and burnished.

Moreover, there is in evidence herein the testimony of one George D. Pine, an importer and dealer in merchandise which includes, among other things, split-steel rings of the character here under consideration, to the effect that the latter are staple articles and are sold by him to general hardware stores and to manufacturers of key chains, whistles, and like small articles to which chains are attached; but that he has never sold any to manufacturers of fishing tackle, nor does he cater to the latter trade.

Although the testimony does not fully warrant the concession, let us, for the purposes of the case, admit that these rings are chiefly employed in the manufacture of fishing tackle. We still are confronted with the fact that they are never so used in the condition here imported. In view of this circumstance, the prevailing decisions on the subject require that they must be excluded from the tariff provision for parts of fishing tackle. The following rulings make this conclusion inevitable.

In the case of Fenton *v.* United States (1 Ct. Cust. Appls., 529; T. D. 31546) small, oval-shaped pieces of cork, tapering at one or both ends, and with holes lengthwise through them, were held not to be fishing floats or cork floats for use in fishing, because their unfinished condition as imported did not warrant their immediate use as such by the angler. That case arose under the act of 1909, and in construing the provision therein for "all other fishing tackle" the

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United States Court of Customs Appeals, in the course of its opinion, said:

We think it is apparent that the term "all other fishing tackle" is a collective designation inserted for the purpose of including any fishing tackle not specifically enumerated, and that the words "parts thereof" are inserted as a precaution and refer to such completed articles as may be used by anglers, either alone or in connection with another article. A part of a fishing tackle may well mean a rod or a reel, a hook or a line, and these articles are also in themselves fishing tackle and collectively so designated. But we do not think in its common, ordinary meaning the term "fishing tackle" includes a rod, reel, hook, or float that is not in finished condition, ready for the angler's use, and the term "parts thereof" must refer to the completed article, whatever it may be, that is also ready for use, either alone or in connection with other articles of the angler's outfit. When ready for use it is a part of the fisherman's tackle, his outfit, one of his implements; and if not in a condition to be used, of course, he can not use it, and it is not fishing tackle or a part thereof.

Perhaps more directly in point is the ruling of this board, G. A. 7385 (T. D. 32766), in the matter of protests 407211, etc., of Baese & Co., wherein was decided the tariff status of certain agate rings suitable for use in the manufacture of guides for fishing rods. Upon authority of the court's decision in the Fenton case, *supra*, the board held that, inasmuch as the agate rings required to be mounted in metal holders before they could be adapted for the angler's use, they were not properly classifiable as parts of fishing tackle; that the ring alone was a manufacture of agate, no doubt intended for use in the manufacture of parts of fishing tackle, but in the condition in which it was imported constituted neither fishing tackle nor parts thereof.

Although the collector's classification has been challenged by the importers, the Government has introduced no proof herein to show that these articles are ready for immediate use by the angler, and thus parts of fishing tackle within the judicial interpretation of that provision. And inasmuch as the rings are made from steel wire, they are properly classifiable as manufactures of wire under paragraph 114. That claim in each of said protests is therefore sustained and the decision of the collector classifying said articles under paragraph 136 is in each instance reversed. In all other respects, however, the protests are overruled.

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(T. D. 36769—G. A. 7981.)

*Cotton bedspreads in the piece.*

COTTON CLOTH, PRINTED—BEDSPREADS IN THE PIECE.

Cotton cloth which has first been woven plain and subsequently has had printed thereon separate bedspread designs at regular intervals throughout the cloth, with sufficient space between each design to permit the cloth to be cut into separate bedspreads, is dutiable at 30 per cent ad valorem under the provision in paragraph 266, tariff act of 1913, for "all articles made

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from cotton cloth, whether finished or unfinished," rather than as printed cotton cloth under paragraph 252 of said act.—*In re* Vandegrift, G. A. 2369 (T. D. 14611); *In re* Campbell, G. A. 7537 (T. D. 34243); *In re* Knauth, G. A. 7673 (T. D. 35101); *In re* Tiedemann, Abstract 32450 (T. D. 33464); *In re* Valentine, G. A. 7321 (T. D. 32240); United States *v.* Buss (5 Ct. Cust. Appls., 110; T. D. 34138); and Auffmordt *v.* United States (7 Ct. Cust. Appls., —; T. D. 36320), cited.

COOPER, *General Appraiser*, dissenting, holds: That cotton cloth in the piece is not transformed into "articles made from cotton cloth, finished or unfinished" by the printing of designs thereon, which is the operation that merely changes the plain cotton cloth into printed cotton cloth.

## United States General Appraisers, New York, October 25, 1916.

In the matter of protest 803054 of Snow's United States Sample Express Co. (Ltd.) against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

*Strauss & Hedges* (*Allan R. Brown* of counsel) for the importers.

*Bert Hanson*, Assistant Attorney General (*Martin T. Baldwin*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; COOPER, G. A., dissenting).

HOWELL, *General Appraiser:* The merchandise covered by this protest consists of cotton bedspreads in the piece. It was assessed for duty at the rate of 30 per cent ad valorem under the provision in paragraph 266, tariff act of 1913, for "all articles made from cotton cloth, whether finished or unfinished, * * * not specially provided for in this section." The importers rely on the claim in their protest that the goods are dutiable as printed cotton cloth under paragraph 252 of said act.

At the outset it should be noted that paragraph 253, which defines the term "cotton cloth," specifically states that it "shall not include any article, finished or unfinished, made from cotton cloth."

The goods are imported in lengths of about 30 yards, the cotton cloth having first been woven plain and then having been printed at appropriate intervals with separate bedspread designs. Between each design there is sufficient space to cut the cloth into separate bedspreads. Each design extends practically the full width of the goods, the selvages having fast edges, so that all that is required to be done in order to obtain a complete bedspread is to cut the fabric between the designs and after separation hem the cut edges. In his report the appraiser states that—

By reason of these designs and the intervening spaces between each one for separation purposes, the cloth in question is commercially unfit for any other use than to be cut into such articles. As the character or identity of the individual article is fixed with certainty in the merchandise under consideration, it was treated for dutiable purposes as if already cut apart and returned for duty as articles of cotton cloth, unfinished, at 30 per cent ad valorem, paragraph 266, act of 1913.

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The importers' witness states that he has been selling the goods in the United States for 10 years, and that they are primarily used for bedcovers, but that they can be used for table covers or for curtains or portières. He admitted, however, that he had only seen them used for purposes other than as bedspreads in two places.

The question for decision is whether or not these goods have been so far advanced in manufacture that they have passed beyond the condition of cotton cloth and become "articles made from cotton cloth, whether finished or unfinished."

In Vandegrift's case, G. A. 2369 (T. D. 14611), wherein certain lace window curtains in the piece were held to be dutiable as curtains and not as manufactures of cotton, this board said:

> The principle involved here is analogous to the one decided by Judge Lacombe (*In re* Mills, 56 Fed., 820), namely, whether it is sufficiently clear from an examination of the merchandise as it is imported that it is designed to be used for window curtains and for no other purpose. To paraphrase the learned judge, whether the cotton net in question is made up sufficiently far to enable us to identify the particular article that is going to be made out of it.

In the case of Campbell, Metzger & Jacobson, G. A. 7537 (T. D. 34243), the board, in a majority opinion, held that cotton cloth in the piece, having printed thereon designs of bibs and aprons, each design, when separated, forming a complete bib or apron, was dutiable under the provision for "articles of wearing apparel * * * made up or manufactured, wholly or in part." In that case it was contended, as it is here, that notwithstanding the printed designs on the cloth the merchandise could be used for purposes other than that indicated by the designs. The board found, however, that the primary purpose of the cloth was for making bibs and aprons, and said:

> Manifestly, the goods are bibs and aprons fabricated in the piece, and the exceptional use to which some of them may be put should not be allowed to change their classification for dutiable purposes.

In Hartman's case, G. A. 3334 (T. D. 16815), where the board had before it handkerchiefs in the piece and the contention was made that they were used not only as handkerchiefs but as table or cushion covers, the board said:

> Although some of these articles may have been sold for use as table or cushion covers, and even though these here in question may have been intended for sale to upholsterers for that purpose, it nevertheless remains a fact that they are of the size, form, and design of articles long and familiarly known as handkerchiefs, bandannas, scarfs, or mufflers, such as are used for wearing apparel and are "made up in part by the manufacturer."

The rule that articles in the piece are to be classified the same as if imported separated from the piece has been generally followed by this board and the courts for many years under various tariff acts. G. A. 2967 (T. D. 15867), G. A. 3334 (T. D. 16815), G. A. 4347 (T. D. 20636), G. A. 2369 (T. D. 14611), G. A. 2436 (T. D. 14714), G. A. 6116 (T. D. 26613), G. A. 1995 (T. D. 13801), G. A. 7460 (T. D. 33406), Abstract 20392 (T. D. 29464), Robinson *v.* United States (122 Fed., 970), and Oppenheimer *v.* United States (66 Fed., 52).



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So, too, in the case of Knauth, Nachod & Kuhne, G. A. 7673 (T. D. 35101), the board held that Turkish towels in the piece, so woven as to be only suitable for towels, and only requiring to be cut apart at the proper place and hemmed at the edge in order to complete the towels, were dutiable as towels rather than as cotton cloth.

And in Tiedemann's case, Abstract 32450 (T. D. 33464), we held that silk chiffon in the piece, 120 centimeters wide, on which were printed at regular intervals throughout the piece designs or squares which, when cut apart, required only slight manipulation to make a complete blouse, was dutiable as silk wearing apparel.

In the case of United States *v.* Buss (5 Ct. Cust. Appls., 110; T. D. 34138), which involved cotton coat hangers in the piece, the court, after reviewing the authorities relative to articles in the piece, said in part:

> The rule expressed by the decisions just cited recognizes the fact that most small articles are not produced as individual or separate products of the loom, but for economy of manufacture are first woven "in the piece." The rule of decision is therefore established that where such articles are imported in the piece and nothing remains to be done except to cut them apart they shall be treated for dutiable purposes as if already cut apart and assessed according to their individual character or identity. This follows, however, only in case the character or identity of the individual articles is fixed with certainty and in case the woven piece in its entirety is not commercially capable of any other use.

See also Auffmordt *v.* United States (7 Ct. Cust. Appls., —; T. D. 36320), and Tiedemann's case, G. A. 7948 (T. D. 36609).

We think it is sufficiently clear from the record in this case and an inspection of the sample in evidence that the merchandise is bedspreads in the piece, and that "the woven piece in its entirety is not commercially capable of any other use." It is something more than printed cotton cloth, the designs and the intervening spaces between them for separation purposes having clearly fixed the character of the individual articles as bedspreads, and rendered the merchandise commercially unfit for any other purpose than for separation into the individual bedspreads. The ordinary printed cotton cloth of commerce is adapted for various uses, whereas the merchandise before us is confined to one use. In a pamphlet issued to the trade in this country (illustrative Exhibit A) it is described as "printed seamless bedspreads," and nowhere in the record do we find any evidence that it is offered to the trade in this country as printed cotton cloth. Although it is invoiced at a price per linear yard, we think it fairly appears from the record that the unit of sale in this country is the individual bedspread, whereas printed cotton cloth is sold by the yard. We think the provision in the statute for printed cotton cloth was intended to cover printed cotton cloth of a character such as is commercially suitable for the various uses to which printed cotton

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cloth is generally put, and was not intended to cover individual articles printed "in the piece," and which only require to be cut apart to adapt them to their ultimate use.

In their brief, counsel for the importers suggest that a distinction is to be made between goods where the "article is actually formed in the weaving of the cloth, such as the case of Turkish towels, where the lines of demarcation were woven in the fabric, and goods like the ones at bar, where the cloth is first woven and afterwards the bedspread design is printed thereon. We think, however, that this argument tends to support the Government's position, for, as the Assistant Attorney General very properly says, "If the weaving of the individual design produces articles that are dutiable as 'articles in the piece,' then still more does the printing of the individual design produce the same result."

In Valentine's case, G. A. 7321 (T. D. 32240), the board, in holding that certain blanket cloth had been made into articles, stated that in the decisions "the test applied to determine whether an article is cotton cloth or an article made from cotton cloth, finished or unfinished, has been whether or not any labor has been bestowed on the cotton cloth subsequent to the process of weaving other than to cut it into lengths." (The act of 1909, under which that case arose, made specific provision for cotton cloth "in the piece or cut in lengths.")

In the present case it is clear that labor has been bestowed on the cotton cloth subsequent to the process of weaving, *i. e.*, the labor of printing.

Another reason suggested by counsel for the importers for distinguishing this case from the cases to which we have referred is that there is no specific tariff provision for bedspreads such as there was for towels, handkerchiefs, etc., and the goods should therefore be classified as cotton cloth and not placed under the general provision for articles made from cotton cloth.

We think this argument is answered by the suggestion of the Assistant Attorney General that "if the thing is an unfinished bedspread, it is certainly an unfinished 'article,' and therefore it necessarily falls outside the cotton-cloth schedule, for that schedule expressly excludes (par. 253) 'any article, finished or unfinished, made from cotton cloth.'"

We are of the opinion that the merchandise is no longer merely cotton cloth, but has been so far advanced in manufacture as to become a partly manufactured or unfinished article made from cotton cloth. As such it is expressly provided for in paragraph 266, as assessed.

The protest is accordingly overruled and the decision of the collector affirmed.

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DISSENTING OPINION.

COOPER, *General Appraiser:* I dissent from the decision of the board in this case for the reason that I believe that the goods in the condition as imported is "printed cotton cloth" and can not in any sense be considered as "articles made from cotton cloth." The cloth is imported in pieces of about 30 yards in length, and the unit of sale is the yard. Articles are sold at a certain price per piece, dozen, gross, etc., while fabrics are sold by the yard or meter. To me it seems absurd to hold cotton cloth printed with a design, which repeats every 90 inches, to be dutiable as "articles made from cotton cloth," while the same fabric printed in the same manner with a smaller pattern, a floral design or any running design, is concededly dutiable according to the average number of the yarn in the cloth, and, consequently, the same quality and kind of cloth is subject to different rates of duty in accordance with the character of the figures printed thereon by the machine which is used in the manufacture of the completed cloth.

It is difficult to see how cotton cloth itself can be held to be "articles made from cotton cloth." It is not the intent of the manufacturer, but the act of the manufacturer that governs the dutiable characteristics of the merchandise imported into this country. In this case, the manufacturer by his acts and process of manufacture has made this merchandise into printed cotton cloth and nothing else. The board holds that the act of printing the cloth, which brings such merchandise within the provision for printed cotton cloth, takes it out of the provision altogether and throws it into the catch-all provision of the cotton schedule, which covers "articles made from cotton cloth, whether finished or unfinished, and all manufactures of cotton not specially provided for."

In the case of Hartranft *v.* Weigmann (121 U. S., 609) we have a definition and decision as to what is a manufacture or a manufactured article that furnishes light for and support to my contention. That case lays down the rule that to constitute a manufacture there must be a transformation and that mere labor bestowed upon an article, even if that labor is applied through machinery, will not make it a manufacture unless it has progressed so far that a transformation ensues and the article becomes commercially known as another and different article from that in which it began its existence. The cotton cloth in question has not been transformed into any other article. It is cotton cloth according to the definitions of that term, which means "any woven fabric used for garments or other purposes." Robertson *v.* Hedden (40 Fed., 322). I do not think that it can be said that Congress intended or imagined that cotton cloth could be made into a separate entity by the process of printing alone, for it has made "printed cotton cloth"

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a separate entity from "cotton cloth" for tariff purposes, and it imposed a higher duty on cotton cloth which is printed than on that which is plain. Paragraph 252 reads, "cotton cloth when * * * printed," etc., and Congress thereby recognized that after cotton cloth is printed it still remains cotton cloth, because it levied duty on printed cotton cloth according to the same specifications—the average number of the yarn in the cloth—as on cotton cloth which is not so decorated. A higher duty was imposed on printed cloth than on plain cloth presumably because the printed cloth has gone through an additional process, which process does not change the cloth into another article but adorns it and enhances its value as cotton cloth.

From the abundance of decisions cited by my colleagues it might be inferred that no authorities could be found to sustain the importers' contention. But such is not the case. Just as good reasons have been given by the board and the courts, and there are just as many authorities to follow in holding this merchandise to be printed cotton cloth as my colleagues have cited on the other side of the question. And, furthermore, I do not think that all of the decisions cited in the prevailing opinion are authorities pertinent to the issue here involved. I think the following cases upon which the board rests its decision are either distinguishable or not in point:

In the case of Knauth, Nachod & Kuhne, G. A. 7673 (T. D. 35101), the question was whether the merchandise was dutiable as "towels made of cotton" or as "cotton cloth." It was conceded that the articles were Turkish towels woven with spaces between each separate towel, so as to be easily separated into completed towels, and the board held that the merchandise was dutiable under the *eo nomine* provision for towels. In the case of Vandegrift & Co., G. A. 2369 (T. D. 14611), the question was whether the articles in the piece were dutiable as "lace window curtains" or as "manufactures of cotton." The board held that the articles there in question were commercially known as "lace window curtains" and were dutiable under the specific provision therefor. And in the case of Tiedemann & Sons, G. A. 7948 (T. D. 36609), also cited by the board, it was found that the goods in the piece were commercially known as veilings, there being a special *eo nomine* provision in the tariff for that merchandise. These three decisions are not applicable to the question here involved, because in those cases there were *eo nomine* provisions covering the articles, and the goods were shown to actually and commercially come within those *eo nomine* provisions, and it is beyond dispute that the commercial designation of an article among traders and importers fixes its character for the purpose of the tariff laws. Arthur *v.* Lahey (96 U. S., 112). Furthermore, there are no *eo nomine* provisions involved in this case. Surely the

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provision for "printed cotton cloth" is more specific than the residuary provision of the cotton schedule, under which the board holds the merchandise dutiable.

In the case of United States *v.* Buss (5 Ct. Cust. Appls., 110; T. D. 34138), the sole question at issue was whether the imported merchandise was a tape. The board and the court held that the merchandise was not a tape, so that it naturally fell for duty under the catch-all provision, as "manufactures of cotton." The excerpt which the board quotes from that decision is pure dictum and has nothing to do with the decision of the case.

The decision in Auffmordt *v.* United States (7 Ct. Cust. Appls., —; T. D. 36320), as I read it, supports the contention of the importers in the case at bar rather than the classification made by the collector, for in that case the narrower fabrics, which were commercially known as trimmings, were held dutiable as such, while the wider goods, which were to be cut up into forms before being used as trimmings, were held dutiable as woven fabrics of silk. That case also overrules the case of Robinson *v.* United States (122 Fed., 970), which is cited as authority in the board's opinion in the case of Campbell, Metzger & Jacobson, G. A. 7537 (T. D. 34243), and quoted in this decision.

The board principally relies upon the case of Campbell, Metzger & Jacobson, *supra*, in which the majority of the board held that cotton cloth printed with designs of bibs and aprons was partly made wearing apparel. Each and every one of the decisions relied upon by the board was commented upon and explained in my dissenting opinion in that case, and I am still of the opinion that the decisions and authorities upon which the board relied in that case, as quoted in the majority opinion above, were decided upon commercial testimony in the particular cases or followed dicta in other decisions and are consequently weak authorities to be followed in this case.

To establish that the line of decisions has not been uniform and consistent, and that the doctrine of *stare decisis* or established executive practice can not be applied, I cite the following cases wherein cloth in the piece so manufactured as to be suitable for making particular articles has been held dutiable under the provisions for cloth and not as articles made from cloth:

In the case of Stern Bros., G. A. 4568 (T. D. 21651), table covers, portières, curtains, etc., woven in the piece but cut into separate pieces, were held dutiable as manufactures of cotton. The Circuit Court for the Southern District of New York reversed the board, however, and held the goods dutiable under the provisions for cotton cloth. Stern *v.* United States (123 Fed., 192). The case of United States *v.* Bernhard (150 Fed., 375; T. D. 25470) is to the same effect. The court held that finished cotton blankets and couch

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covers, the edges of which had been whipped or hemmed, were dutiable under the provisions for cotton cloth. And again in the case of United States *v.* Douglass (T. D. 25469) the same court held that Turkish table covers, made of cotton damask, with fringed edges, which were imported in the completed condition ready for use, were also dutiable under the cotton-cloth provision. This latter case was appealed to the Circuit Court of Appeals, but the suit was subsequently dismissed. To the same effect are the following decisions of the board: *In re* Campbell, Metzger & Jacobson, G. A. 5319 (T. D. 24352), covering tapestry squares and curtains made up and ready for use; *In re* Gardner & Co., G. A. 5612 (T. D. 25107), covering finished cotton damask napkins; *In re* Hunter & Witcombe, G. A. 5691 (T. D. 25333), covering curtains, table covers, cloths, doilies, and other articles made up and ready for use; *In re* Carson, Pirie, Scott & Co., G. A. 4136 (T. D. 19285), covering cotton toweling; *In re* Spielmann & Co., G. A. 4870 (T. D. 22829), holding silk fabrics printed with designs for waists and cushion covers dutiable as woven fabrics of silk; and *In re* Dumbert, G. A. 5801 (T. D. 25631), covering pile fabrics in the piece intended to be cut into slipper uppers and having the line of cutting of the individual uppers made by omitting the pile portion of the fabric, which were held dutiable as pile fabrics and not as articles made from pile fabrics.

The above cases all refer to the tariff act of 1897, wherein the definition of cotton cloth was given as "woven fabrics of cotton in the piece or otherwise" (par. 310). The words "or otherwise" were construed to include finished articles made from cotton cloth and therefore the finished curtains, doilies, blankets, table covers, portières, couch covers, etc., were held dutiable under the cotton-cloth provisions.

In the tariff act of 1909, cotton cloth was defined as "woven fabrics of cotton in the piece or cut in lengths" (par. 320), and, under that act, the following articles were held dutiable under the provisions for cotton cloth: Blankets cut in lengths but not hemmed or finished (Doull, Miller & Co., Abstract 32065, T. D. 33348); quilts in the piece (Sherman & Sons, Abstract 27282, T. D. 32073); cloth cut in meter lengths for hat foundations (Theodore Ascher Co., Abstract 27709, T. D. 32224); neckties and scarfs in the piece (Knauth, Nachod & Kuhne, Abstract 25741, T. D. 31654); table covers in the piece (Campbell, Metzger & Jacobson, Abstract 33127, T. D. 33660); kimonos in the piece (Sachs & Co., G. A. 7482, T. D. 33643).

The term cotton cloth in the act of 1913 is defined as "woven fabrics of cotton, in the piece" (par. 253). The language is the same as in the preceding acts except that the words "or otherwise" and "cut in lengths" were omitted. Thus, in each of the last two tariff acts, Congress has narrowed the provision for cotton cloth.

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In the act of 1897 it covered finished articles made from cotton cloth, in the act of 1909 it covered articles woven in the piece and cut in lengths only, while in the present act it covers only piece goods.

The cotton blankets, quilts, neckties, scarfs, and table covers, in the piece or cut in lengths, imported during the act of 1909 were held dutiable as cotton cloth although the definition for cotton cloth contained the restriction that the provisions "shall not include any article, finished or unfinished, made from cotton cloth." The identical provision is included in the definition of cotton cloth in the present act (par. 253). The blankets in the case cited were unfinished articles made up to a greater degree than can be said of the merchandise now under consideration, for they were cut in lengths and their intended use was definitely defined, but it was held that the exclusion of "any article, finished or unfinished, made from cotton cloth" did not apply to them, and I think it should not be construed to apply to the merchandise now under consideration.

The excerpt quoted from the case of Buss *v.* United States, *supra*, in the board's opinion in this case, after stating that many articles are woven in the piece and should be considered for duty purposes as if already cut apart, says:

> This follows, however, only in case the character or identity of the individual articles is fixed with certainty and in case the woven piece in its entirety is not commercially capable of any other use.

I submit that this is not the case of the merchandise in question, for the appraiser, in his special report, stated that the goods were intended for use as table covers, and the testimony shows that they are actually used for bedspreads, curtains, portières, and other upholstery purposes. It thus appears that the character or identity of the individual articles is not fixed with certainty, and that the merchandise is commercially capable of use in the same manner as any figured cloth of like material.

Assuming for the sake of argument that the merchandise is designed and intended for making bedspreads, it is imported as printed cotton cloth in the piece. Courts have held that merchandise must be classified in its condition as found when imported, and that importers may have goods so manufactured on the other side as to pay the lowest rate of duty in the United States. See Seeberger *v.* Farwell (139 U. S., 608), Merritt *v.* Welsh (104 U. S., 694), Worthington *v.* Robbins (139 U. S., 337), and United States *v.* Schoverling (146 U. S., 76). In the case of United States *v.* Citroen (223 U. S., 407; T. D. 32298), the Supreme Court held that, notwithstanding the fact that pearls had been exhibited and worn in Europe as a necklace and were disconnected and brought through the customs lines as loose pearls and thereafter reassembled here into a necklace, they were nevertheless loose pearls for dutiable purposes and not a necklace. And so in

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the case at bar, it is wholly immaterial whether the importer manufactured his goods on the other side in a manner to escape the higher duty. The sole and only question to be determined is, In what condition is the merchandise as imported? It responds in every particular to the description of cotton cloth as set forth in paragraph 253. It is woven fabric of cotton in the piece, it is figured by the printing thereon, and the average number of the yarn can be ascertained by the methods therein laid down.

The only difference between the definition of cotton cloth in the act of 1909 and in the act of 1913 is that the cloth in the act of 1913 is limited to goods "in the piece," while the act of 1909 covered goods "in the piece or cut in lengths." If the cotton blankets cut in lengths and the quilts, table covers, neckties, etc., in the piece were not excluded from the cotton-cloth provisions of 1909, I can not see why the merchandise in question, of which neither the appraiser nor the importers can tell the ultimate use, should be excluded from the cotton-cloth provisions of the act of 1913.

From the authorities cited by my colleagues, it appears that the board considers the question before it is *stare decisis*. It seems to me, however, that there is no definite and uniform line of decisions holding merchandise of this character to be unfinished articles. Each case cited seems to stand upon the individual facts of that case. The board and the courts have decided one case one way and another case the other way. If the decision of the case at bar is to be based on prior cases, which line of decisions should be followed? It seems to me that the decisions holding such merchandise dutiable as cotton cloth are more sound and just than those upon which the board relies. Upon the question of *stare decisis* and long-established practice in such a case, I refer to my remarks in the dissenting opinion in the case of Campbell, Metzger & Jacobson (G. A. 7537, *supra*).

For the reasons above given, I am of the opinion that the merchandise in question is properly dutiable at 12½ per cent ad valorem as cotton cloth, printed, containing yarns the average number of which exceeds number nine and does not exceed number nineteen. I think the protest should be sustained.

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(T. D. 36770—G. A. 7982.)

*Carbureters for oil-burning traction engines.*

Carbureters composed in chief value of metal and intended for use in oil-burning traction engines are properly classifiable under paragraph 167, act of 1913, as manufactures of metal not specially provided for, even though the traction engines may be employed principally in hauling plows and other agricultural implements. A traction engine, or a steam engine,

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does not lose its identity as such merely because it may be employed for hauling agricultural implements.—G. A. 7900 (T. D. 36365) cited and followed.

United States General Appraisers, New York, October 27, 1916.

In the matter of protests 725222, etc., of the J. D. Richardson Co. against the assessment of duty by the collector of customs at the port of Detroit.

[Affirmed.]

*Curie, Smith & Maxwell* (*Albert MacC. Barnes, jr.*, of counsel) for the importers.

*Bert Hanson*, Assistant Attorney General (*Martin T. Baldwin* and *Harry M. Farrell*, special attorneys), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

FISCHER, *General Appraiser:* The articles in question consist of carbureters intended for use in oil-burning traction engines. Duty was levied thereon at the rate of 20 per cent ad valorem under paragraph 167 of the act of 1913 as manufactures of metal not specially provided for, and they are claimed to be properly entitled to free entry under paragraph 391 of said act as parts of agricultural implements.

These protests were decided adversely to the contention of the importers in our decision rendered on April 30, 1915, and published as Abstract 37715, but upon their application a rehearing was granted the importers to enable them to introduce further testimony in support of said claim. The record is now complete and we are asked to determine the issue thereby presented.

L. A. Wilkie, who appeared for the importers, testified that he conducts a general machine-shop business under the name of the Windsor Machine & Tool Works, at Windsor, Ontario; that the particular carbureters here under consideration were made by him under contract for the M. Rumley Co., of La Porte, Ind., for sole use in a specially constructed and patented traction engine made by the latter concern; that these carbureters have three chambers, one for water, one for kerosene oil, and one for gasoline; that the engine is started by gasoline, and after it gets under way the oil and water are turned on; that this mixture of oil and water, as a result of the suction caused by the piston traveling backward and forward in the cylinder, is drawn or forced through the latter into the cylinder head where, on being compressed, it creates a gas which is ignited by an electric spark, causing the explosion.

This witness further stated that he had never seen these carbureters used in any other than the said traction engines; that the latter are employed for drawing hay and for hauling wagonloads of potatoes to the market or heavy loads along roads, etc.

J. F. Bradley, another witness for the protestants, testified that at the time of the shipment in question he was assistant sales manager

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for the Rumley's Products Co., since reorganized under the name of the Advanced Rumley's Thresher Co. (Inc.), of which latter corporation he is now the secretary and assistant sales manager; that these carbureters, the sole function of which is to properly proportion the mixture of kerosene oil and water so as to give a perfect combustion in the engine, are used exclusively in specially designed and patented oil-burning friction engines which are made by his corporation and which are advertised throughout the country as farm power machinery or agricultural machinery; that said corporation also manufactures similar friction engines, thrashing machines, clover rollers, corn thrashers, plows, water tanks for use with engines, and various attachments for same; and that the tractors or traction engines in which these carbureters are installed are employed principally for hauling plows and for running thrashing machines on farms.

F. A. Coslet, another witness for the protestants, testified that he is the final inspector in the employ of the Advanced Rumley's Thresher Co., and as such has supervision of the work of assembling the farm tractors made by said corporation; that the carbureters in question are specially constructed and designed for use in oil-burning engines; that oil is employed because it has been found to be a cheaper commodity for the purpose than gasoline; that inasmuch as the said traction engines are patented and have specially constructed mechanisms these particular carbureters could not be used in any other kind of engine; that while these traction engines are not intended to be used for general contract work they could nevertheless be used for that purpose.

From this testimony we think it is clearly obvious that these traction engines are primarily and solely intended for hauling purposes, and that they possess no function which in the remotest degree could be considered agricultural in character. The fact that one particular type of engine may prove peculiarly adaptable for hauling agricultural implements will certainly not operate to make such an engine an agricultural implement. It still remains what its internal mechanism inevitably constitutes it, a hauling engine, and its definite status as such will not be changed merely because it may prove advantageous to use the engine for some particular line of work.

Indeed, the same reasoning upon which we based our ruling in the case of Hartmann, G. A. 7900 (T. D. 36365), involving steam engines which were used for hauling plows, applies with equal force with respect to the present merchandise. In the course of our opinion in that case we said:

> Manifestly, the very term "agricultural implement" contemplates something which is used in cultivating the soil for the purpose of raising crops for man's food or raiment. As observed by the court in the case of United States *v.* Boker (6 Ct. Cust. Appls., 243; T. D. 35472), "there is no implement enumerated

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within the paragraph that is not devoted to the production of food or raiment for man, and there is none so enumerated that is employed in his other pursuits."

Obviously, a steam engine, the functions of which are employed solely for generating steam power, can in no sense be considered an agricultural implement. To hold that such an engine, simply because its power happens to be used to work or haul a plow, becomes *ipso facto* a plow or an integral part of the plow would be just as ridiculous and absurd as to say that a horse used for the same purpose may properly be considered as part of a plow and classifiable accordingly.

Again, to hold as meritorious the contention that a steam engine which operates a plow is entitled to the same classification as the plow would, in effect if not in substance, mean that any other power-driving mechanism or device—notwithstanding it may be fully complete in every detail and a separate and distinct article from the one for which it furnishes the motive power—should, for tariff purposes at least, be treated as though it were actually incorporated in and formed part of the internal mechanism of the machine which its power operated. In other words, that in construing an *eo nomine* designation for, say, sewing machines, embroidery machines, machine tools, printing presses, or any of the innumerable machines employed in the different trade industries, where such designations were followed by a provision for the respective parts of such articles, it would be necessary to classify within the meaning of the term "parts" articles which were in themselves complete and independent entities in the form of power-driving engines and machines. A mere recital of any such proposition is sufficient to show the utter absurdity of it.

In harmony with the ruling just cited we overrule severally and in every respect the protests above enumerated, and we affirm the decision of the collector in each instance.

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## *Abstracts of decisions of the Board of General Appraisers.*

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*Board 1*—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

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BEFORE BOARD 1, OCTOBER 23, 1916.

**No. 40311.**—Protests 798984, etc., of Morris Goldzier et al. (New York).

FEATHERS.—Merchandise classified as ornamental feathers at 60 per cent ad valorem under paragraph 347, tariff act of 1913, is claimed dutiable as nonenumerated articles under paragraph 385.

Opinion by MCCLELLAND, G. A. Protests unsupported; overruled.

**No. 40312.**—Protests 801766, etc., of Calumet Mfg. Co., and protest 804668, of A. L. Tuska Son & Co. (New York).

TISSUE PAPER HATS—TOYS.—Articles classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as manufactures of tissue paper at 30 per cent under paragraph 323.

Opinions by SULLIVAN, G. A. Paper hats used by grown-ups as well as by children were held dutiable as manufactures of tissue paper under paragraph 323. Abstracts 38875 and 39821 followed.

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**No. 40313.**—Protest 801599 of Abraham & Straus (New York).

SILK HANDBAGS.—Women's handbags returned by the appraiser as composed in chief value of silk, classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of silk at 45 per cent under paragraph 318.

Opinion by SULLIVAN, G. A. From the appraiser's report the handbags in question were held dutiable as manufactures of silk under paragraph 318.

**No. 40314.**—Protest 768628 of American Thermo Ware Co. (New York).

PEDOMETERS—TALLY REGISTERS.—Pedometers and tally registers classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufacturers of metal at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. On the authority of United States *v.* Sussfeld (7 Ct. Cust. Appls., —; T. D. 36454) the pedometers and tally registers which are composed in chief value of metal were held dutiable under paragraph 167.

**No. 40315.**—Protest 765036 of Adolph Strauss & Co. (Baltimore).

GLASS VIALS.—Merchandise invoiced as "Glasrohrchen," classified as blown glass articles at 45 per cent ad valorem under paragraph 84, tariff act of 1913, is claimed dutiable as containers at 30 per cent under paragraph 83.

Opinion by SULLIVAN, G. A. Upon stipulation of counsel that the glass vials in question are of the same character as those passed upon in Abstract 39725 they were held dutiable under paragraph 83.

**No. 40316.**—Protests 770888, etc., of G. Gennert et al., and protest 783327 of F. L. Kraemer & Co. (New York).

CAMERAS—OPTICAL INSTRUMENTS.—Enlarging cameras classified as optical instruments at 35 per cent ad valorem under paragraph 93, tariff act of 1913, are claimed dutiable as photographic cameras or as manufactures in chief value of wood at 15 per cent under paragraph 380 or 176.

Opinions by SULLIVAN, G. A. On the authority of Abstract 39771 enlarging cameras were held dutiable as photographic cameras under paragraph 380, as claimed.

**No. 40317.**—Protest 795835 of Oelschlaeger Bros. (New York).

HAND READING GLASSES—MICROSCOPES.—Pocket readers or magnifying glasses, used as hand reading glasses, classified as optical instruments at 35 per cent under paragraph 93, tariff act of 1913, are claimed dutiable as microscopes at 25 per cent under paragraph 94.

Opinion by SULLIVAN, G. A. The hand reading glasses in question were held properly classifiable as microscopes under paragraph 94, as claimed. Abstract 39936 followed.

**No. 40318.**—Protest 805492 of Hammel, Riglander & Co. (New York).

LOUPES—MAGNIFYING GLASSES—MICROSCOPES.—Loupes classified as optical instruments at 35 per cent ad valorem under paragraph 93, tariff act of 1913, are claimed dutiable as microscopes at 25 per cent under paragraph 94.

Opinion by SULLIVAN, G. A. On the amended report of the appraiser so-called loupes were held dutiable as microscopes under paragraph 94. G. A. 7859 (T. D. 36174) followed.

**No. 40319.**—Protest 804386 of Wm. A. Brown & Co. (New York).

BRASS GONGS—MUSICAL INSTRUMENTS.—The appraiser reports that the merchandise in question consists of brass gongs. They were classified as musical instruments at 35 per cent ad valorem under paragraph 373, tariff act of 1913, and are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

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Opinion by SULLIVAN, G. A. Upon the amended report of the appraiser the brass gongs in question were held dutiable as manufactures of metal under paragraph 167.

**No. 40320.**—Protest 804995 of Kronfeld, Saunders & Co. (New York).

BOOKLETS WITH PYROXYLIN COVERS.—Booklets of paper printed by lithographic or other process, with covers of pyroxylin, classified as manufactures of pyroxylin at 40 per cent ad valorem under paragraph 25, tariff act of 1913, are claimed dutiable as books of all kinds at 15 per cent under paragraph 329.

Opinion by SULLIVAN, G. A. On the authority of G. A. 7917 (T. D. 36484) booklets with pyroxylin covers were held dutiable under paragraph 329.

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BEFORE BOARD 3, OCTOBER 23, 1916.

**No. 40321.**—Protest 788960 of C. H. Langley (Boston).

JAPANESE PAINTINGS NOT ORIGINAL PAINTINGS.

WAITE, *General Appraiser:* The goods in question in this case are invoiced as 130 original Japanese paintings at $1.50 each. They were assessed at 15 per cent ad valorem under the provision in paragraph 376, tariff act of 1913, for "works of art, including paintings in oil or watercolors," which indicates that they were held by the Government officials to be works of art. The importer claims that they should be admitted free of duty under paragraph 652 as original paintings.

It appears from the evidence that this is a shipment from a great number of these paintings purchased by the importer. According to his testimony he has received of this class of work, and of these particular designs, some 5,000 or 6,000 pictures. His method seems to have been to order in a general way the style of picture he desired, designating the general features; and when they are procured he sells them in connection with a work on Japan, intending them to illustrate Japanese art. It is not disputed but that they are made from stenciled outlines, and a spray is used for the purpose of coloring the background. In fact, it appears that the spray is used either before or after the picture is made.

From the method used in procuring and producing these pictures and the price of them, we should hesitate to dignify them by the term of "original paintings" had the testimony been sufficient to indicate which, if any, were originals, and which replicas or reproductions. It appears from the evidence that there are of the different designs anywhere from three to eight pictures. Of the exhibits produced as official samples it appears there were eight of each. There is nothing, however, in the testimony or the record by means of which we can determine which, if any, were originals.

We are satisfied, further, that they are produced partially by means of stenciling or other mechanical process. Paragraph 652, after enumerating "original paintings in oil, mineral, water, or other colors," says:

> * * * And the words "painting" and "sculpture" and "statuary" as used in this paragraph shall not be understood to include any articles of utility, nor such as are made wholly or in part by stenciling or any other mechanical process; * * *.

It is noted also that while these pictures are spoken of as "paintings," there is nothing in the evidence to indicate whether they are paintings in oil, mineral, water, or other colors.

We conclude the importer has not established his claim. The protest is therefore overruled.

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**No. 40322.**—Protest 803706 of Yglesias Lobo Co. (New York).

CUBAN TREATY—SCRAP ZINC AND ALUMINUM.—Scrap zinc and aluminum are claimed entitled to the benefit of the reduction in duty provided by the Cuban treaty.

Opinion by HAY, G. A. Upon the authority of Abstract 38890 and G. A. 7419 (T. D. 33116) scrap zinc and scrap aluminum were held entitled to a discount of 20 per cent from the regular duty.

**No. 40323.**—Protest 802648 of A. Kastor & Bros. (New York).

NONIMPORTATION—SHORTAGE.—This protest is against the assessment of duty upon a short shipment of 24 dozen scissors.

Opinion by HAY, G. A. It was found that the case in question arrived intact and that the 24 dozen scissors were not imported. Protest sustained.

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BEFORE BOARD 1, OCTOBER 25, 1916.

**No. 40324.**—Protest 803025 of G. E. Evans Co. (New York).

EMOL-KELEET DUSTING POWDER—TOILET PREPARATION—MEDICINAL PREPARATION.

MCCLELLAND, *General Appraiser:* The merchandise involved is described on the invoice as "Emol-Keleet Dusting Powder." It was assessed with duty as a toilet preparation under paragraph 48 at the rate of 60 per cent ad valorem, tariff act of 1913. Claims for duty are made under paragraph 5 at 15 per cent, paragraph 17 at 20 per cent, and under paragraphs 76, 81, 385, and 386 of said act.

Counsel for protestants, preliminary to the examination of the only witness called at the trial, announced "This merchandise is classified as a toilet article; we claim it is a medicinal preparation." This we construe as a waiver of the other claims made in the protest, and on this assumption, supported by the fact that no proof is offered in support of either of these claims, apparently waived, they are overruled.

The paragraph under which duty was assessed reads:

48. Perfumery, including cologne and other toilet waters, articles of perfumery, whether in sachets or otherwise, and all preparations used as applications to the hair, mouth, teeth, or skin, such as cosmetics, dentifrices, including tooth soaps, pastes, including theatrical grease paints, and pastes, pomades, powders, and other toilet preparations, all the foregoing, if containing alcohol, 40 cents per pound and 60 per centum ad valorem; if not containing alcohol, 60 per centum ad valorem; floral or flower waters containing no alcohol, not specially provided for in this section, 20 per centum ad valorem.

The Government has evidently assessed duty on the belief that this article is one the use of which is an application to the skin. The paragraph relied upon by the importers is as follows:

17. Chemical and medicinal compounds, combinations and all similar articles dutiable under this section, except soap, whether specially provided for or not, put up in individual packages of two and one-half pounds or less gross weight (except samples without commercial value), shall be dutiable at a rate not less than 20 per centum ad valorem: *Provided*, That chemicals, drugs, medicinal and similar substances, whether dutiable or free, imported in capsules, pills, tablets, lozenges, troches, ampoules, jubes, or similar forms, shall be dutiable at not less than 25 per centum ad valorem.

The issue therefore is whether the merchandise should be classified as a *preparation used as an application to the skin* or as a medicinal preparation. It may readily be conceived that such a powder might be applied to the skin of a human being in dry form, just as it is imported solely because of its healing

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properties. In such case there would seem to be no room for doubt that in the classification of such an article the provision for medicinal preparations would control over that for preparations used as applications to the skin.

The undisputed testimony of the importers' witness is that this powder is never sold for, and could not be used as, a toilet article, but that it is used similarly to fuller's earth for wounds and bruises and has healing properties.

Printed directions for using the powder in question accompanying Exhibit 1, a sample of the merchandise found in the container, are as follows:

As a dusting powder apply in the usual way with a powder puff. In case of acne or eczema dust the affected parts freely, and in cases of hard-skin growth make a thick paste with a little water and apply to the surface of the skin, covering it afterwards with oiled silk.

For relieving skin irritation in cases of scarlet fever and measles, and for eruptions and rough and inflamed surfaces, apply the powder frequently with a powder puff.

* * * * * * *

This powder is a simple purified natural product, which on analysis is found to be somewhat allied to superior varieties of fuller's earth. It contains a considerable percentage of steatite, silica, alumina, and traces of calcium salts and ferrous oxide. The value of Emol-Keleet in the treatment of skin diseases has already excited great interest amongst the medical profession.

The board has held that red cerate of spermacitti in tablet form, used for chapped lips and chapped hands (Abstract 35867; T. D. 34571); woltat, a powder having cooling properties and used to soften corns and callouses (Abstract 26104, T. D. 31757); orange flower water, rose water, cherry water, and laurel water (G. A. 6098 and 5653); R. V. Cream, used as a remedy for pimples, blotches, itching, and eczema (G. A. 7912; T. D. 36440), were medicinal preparations.

In harmony with these decisions we sustain the claim that the merchandise involved is dutiable at the rate of 20 per cent ad valorem under paragraph 17.

Decision of collector modified accordingly.

**No. 40325.**—Protest 805079 of F. B. Vandegrift & Co. (New York).

LEATHER.—The appraiser reports that the merchandise consists of lambskins, tanned, finished, and specially prepared for use as glove leather. It was classified at 10 per cent ad valorem under paragraph 359, tariff act of 1913, and is claimed entitled to free entry as leather not specially provided for under paragraph 530.

Opinion by McCLELLAND, G. A. It was found that before the leather in question becomes suitable for making gloves it must be staked, washed, put in an egg bath, and finished. It was held entitled to free entry under paragraph 530. Abstract 37563 followed.

**No. 40326.**—Protest 802836-59114 of G. W. Sheldon & Co. (Chicago).

LAVENDER FLOWERS—ROSEBUDS—DRUGS.—Merchandise invoiced as lavender flowers and rosebuds was returned by the appraiser as natural odoriferous substances used in the manufacture of perfumes. It was classified at 20 per cent ad valorem under paragraph 49, tariff act of 1913, and is claimed free of duty as crude drugs under paragraph 477.

Opinion by McCLELLAND, G. A. The evidence showed that the lavender flowers are used for making spirits of lavender, and the rosebuds in the manufacture of tincture of rose and fluid extract of rose and honey of rose. The claim for free entry as crude drugs under paragraph 477 was sustained. Abstract 39004 and McKesson *v.* United States (7 Ct. Cust. Appls., —; T. D. 36282) followed.

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**No. 40327.**—Protests 748178, etc., of Lehn & Fink et al. (New York).

LAVENDER FLOWERS—ROSEBUDS—DRUGS.—Rose leaves, rose flowers, rosebuds, cassia flowers, orange buds, violet flowers, rose petals, orange flowers, and lavender flowers, in a crude and dried condition, classified as natural aromatic substances at 20 per cent ad valorem under paragraph 49, tariff act of 1913, are claimed entitled to free entry as crude drugs under paragraph 477.

Opinion by MCCLELLAND, G. A. It was found that the general use of the articles in question, excepting the cassia flowers, is in the manufacture of medicinal preparations. The claim for free entry under paragraph 477 was sustained. Abstract 39004 followed. The claim as to the cassia flowers not having been supported was overruled.

**No. 40328.**—Protests 716160, etc., of F. W. Woolworth Co. (New York).

STEM WARE.—Glass stem ware classified as articles composed wholly or in chief value of blown glass is claimed dutiable as manufactures of glass.

Opinion by SULLIVAN, G. A. United States *v.* Fondeville (7 Ct. Cust. Appls., —; T. D. 36457) followed as to stem ware. Protests sustained in part.

**No. 40329.**—Protests 651343, etc., of E. A. Bliss Co. (Bridgeport).

SUFFICIENCY OF PROTEST—NICKEL WIRE.—This protest claims that manufactured nickel wire classified at 85 per cent ad valorem is dutiable at only 45 per cent without mentioning the paragraph. A question arises as to the sufficiency of protest.

Opinion by SULLIVAN, G. A. On the authority of United States *v.* Salambier (170 U. S., 621) the protest was found to be within the spirit of the statute and the wire was held dutiable at 45 per cent under paragraph 199, tariff act of 1909.

**No. 40330.**—Protest 787935 of G. Ceribelli & Co. (New York).

CATTLE-HAIR CLOTH ENVELOPES.

BROWN, *General Appraiser:* This suit is brought to determine the proper classification of certain merchandise described by the appraiser in his report as "cattle-hair cloths, square in form, with flaps to fold over similar to an envelope, used for pressing herbs for medicinal purposes."

The appraiser further states in his report:

It is not the hair press cloth of commerce. It was returned for duty as a manufacture of wool at 35 per cent ad valorem under paragraph 288 of the tariff act of 1913, and as it was entered prior to January, 1914, it was assessed for duty by the collector as a manufacture of wool at 44 cents per pound and 50 per cent ad valorem under paragraph 378 of the act of 1909, by reason of paragraph 310 of the act of 1913. The return for duty as a manufacture of wool is error. It should have been returned as a nonenumerated manufactured article at 15 per cent ad valorem under paragraph 385 of the act of 1913 as amended. Note department's instructions on merchandise of this character only in circular shape (T. D. 34285).

Supplemental reports of the appraiser, which are also in the record, are as follows:

There are 12 pieces of the cloth, and the dimensions are 42″ x 42″.

Merchandise similar to that under consideration would be returned for duty under the act of 1909 as a manufacture of wool at 44 cents per pound and 50 per cent ad valorem under paragraphs 378 and 481.

Under the act of 1913 it would not be returned as cattle-hair cloth under paragraph 288 for the reason that it is not a cloth as understood by the trade, it being cut and shaped similar to an envelope, and it is not the hair press cloth of commerce. In accordance with department's instructions in T. D. 34285 it would be returned as a manufactured article, nonenumerated, at 15 per cent under paragraph 385.



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The collector states in forwarding the record:

It would appear from the appraiser's report and his endorsement thereon that the merchandise under consideration is not the hair press cloth of commerce. Following the rulings in T. D. 29930, 29825, and 29839, and practice under the act of 1909, the assessment of duty as made as a manufacture of wool at 44 cents per pound and 50 per cent ad valorem is affirmed under paragraphs 378 and 481 of the act of 1909, to accord with the specific requirements of paragraph 310 of the present tariff relative to importations made before January 1, 1914.

The protestant claims under paragraph 353, act of 1913, at 15 cents per square yard, as "hair press cloth," or under paragraph 385 at 15 per cent as an unenumerated manufactured article. Claims are also made under the first part of paragraph 353 as "haircloth, known as 'crinoline' cloth," and under the last part of paragraph 319 as articles made "of artificial or imitation horsehair." These latter claims are clearly untenable on this record.

In G. A. 7577 (T. D. 34599) the board held the effect of paragraph 310 of the act of 1913 was to continue in force and effect until January 1, 1914, the old Schedule K of the act of 1909, as part of the new act.

The evidence shows clearly that it is not hair press cloth or an article made from hair press cloth, and the proof is legally insufficient to establish any substantial similitude to hair press cloth. Therefore, the claim under the last clause of paragraph 353 must be overruled.

It remains then to determine whether it was properly classified by the collector as a manufacture of wool, by similitude, or whether it falls under the catch-all provision in paragraph 385, as an unenumerated manufactured article.

There is no sample of the merchandise before us and there was no evidence introduced tending to overcome the presumption in favor of the collector's action in classifying this merchandise, as a manufacture of wool by similitude.

On this state of the record on this branch of the issue, judgment must be rendered for the Government sustaining the classification.

**No. 40331.**—Protests 803973, etc., of D. H. Arnold Co. et al. (New York).

MOHAIR LININGS.—Mohair linings classified as cloth in chief value of Angora goat hair at 40 per cent ad valorem under paragraph 308, tariff act of 1913, are claimed dutiable as cloth in chief value of wool at 35 per cent under paragraph 288 or as coat linings under paragraph 290.

Opinion by BROWN, G. A. The linings in question were held properly classified under paragraph 308. Rosenberg *v.* United States (7 Ct. Cust. Appls., —; T. D. 36510) followed.

**No. 40332.**—Protests 802753, etc., of C. A. Auffmordt & Co. et al. and protests 801632, etc., and 803668, etc., of Dieckerhoff, Raffloer & Co. et al. (New York).

MOHAIR DRESS GOODS.—Mohair dress goods classified at 40 per cent ad valorem under paragraph 308, tariff act of 1913, is claimed dutiable at 35 per cent under paragraph 288 or 290.

Opinions by BROWN, G. A. On the authority of Rosenberg *v.* United States (7 Ct. Cust. Appls., —; T. D. 36510) the mohair dress goods in question was held properly classified under paragraph 308.

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BEFORE BOARD 2, OCTOBER 25, 1916.

**No. 40333.**—Protests 762956, etc., of Hirshbach & Smith et al. (New York).

VELVET TABLE COVERS.—Velvet table covers classified at 40 per cent ad valorem under paragraph 257, tariff act of 1913, are claimed dutiable at 35 per cent under paragraph 258.

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Opinion by COOPER, G. A. On the authority of Downing *v.* United States (6 Ct. Cust. Appls., 447; T. D. 35984) the table covers were held dutiable as Jacquard-figured upholstery goods under paragraph 258. Protests sustained in part.

**No. 40334.**—Protests 767370, etc., of Hammel, Riglander & Co. (New York).

POLISHING CLOTHS.—Polishing cloths made from cotton velvet, classified as articles made from pile fabrics, at 40 per cent ad valorem under paragraph 257, tariff act of 1913, are claimed dutiable as polishing cloths at 25 per cent under paragraph 264.

Opinion by COOPER, G. A. The articles were found more specifically provided for as polishing cloths than as articles made or cut from pile fabric. They were held dutiable under paragraph 264, as claimed. Abstract 39050 followed.

**No. 40335.**—Protest 772855 of B. Altman & Co. (New York).

VELVET COVERS—SUFFICIENCY OF PROTEST.—This protest claims that velvet cushions and covers classified at 40 per cent ad valorem are dutiable at only 30 per cent under paragraph 258, tariff act of 1913, as Jacquard-figured manufactures of cotton.

Opinion by COOPER, G. A. In Downing *v.* United States (6 Ct. Cust Appls., 447; T. D. 35984) cushions and covers of the same character were held dutiable at 35 per cent as Jacquard-figured upholstery goods under paragraph 258. This protest, which claims the wrong rate and classification, was held insufficient. United States *v.* Kuyper (6 Ct. Cust. Appls., 142; T. D. 35393) followed.

**No. 40336.**—Protest 787865 of Amerman & Patterson (New York).

SEA-GRASS TWINE—VEGETABLE FIBER.—Merchandise invoiced as sea-grass twine, consisting of several strands of grass twisted into the form of a cord, classified as a manufacture of vegetable fiber at 35 per cent ad valorem under paragraph 284, tariff act of 1913, is claimed free of duty under paragraph 415 or dutiable at 10 per cent under paragraph 372.

Opinion by COOPER, G. A. There was nothing in the record presented to warrant a disturbance of the action of the collector. Protest overruled. Abstract 40119 cited.

**No. 40337.**—Protest 798489 of Sojur Ally (Philadelphia).

DRAWNWORK HANDKERCHIEFS.—Cotton handkerchiefs ornamented with drawnwork, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as hemstitched at 30 per cent under paragraph 255.

Opinion by COOPER, G. A. On the authority of G. A. 7769 (T. D. 35675) the handkerchiefs in question were held dutiable under paragraph 255, as claimed.

**No. 40338.**—Protest 798742 of Davies, Turner & Co. (Boston).

SPONGE BAGS.—Sponge bags of cotton and silk having a rubber lining, classified as a manufacture of cotton at 30 per cent under paragraph 266, tariff act of 1913, are claimed dutiable as druggists' sundries at 15 per cent under paragraph 368.

Opinion by COOPER, G. A. From the analysis it was found that cotton was the component material of chief value. The sponge bags were held properly classified under paragraph 266. Kenyon *v.* United States (4 Ct. Cust. Appls., 344; T. D. 33529) followed.

**No. 40339.**—Protests 742911-48684, etc., of Marshall Field & Co. (Chicago).

FIGURED COTTON CLOTH.—Merchandise classified at 30 per cent ad valorem under paragraph 258, tariff act of 1913, is claimed dutiable as figured cotton cloth under paragraph 252.

Opinion by COOPER, G. A. The figured cotton cloth in question was held dutiable under paragraph 252. G. A. 7904 (T. D. 36386) followed.

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BEFORE BOARD 3, OCTOBER 25, 1916.

**No. 40840.**—Protests 805992, etc., of H. D. Spencer (St. Albans).

GROUND LIMESTONE—FERTILIZER.—Ground limestone, classified under paragraph 81, tariff act of 1913, is claimed entitled to free entry as fertilizer under paragraph 499.

Opinion by HAY, G. A. The merchandise was found to be of the same character as that passed upon in G. A. 7946 (T. D. 36589). Protests sustained claiming free entry under paragraph 499.

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BEFORE BOARD 1, OCTOBER 27, 1916.

**No. 40841.**—Protest 796175 of A. A. Vantine & Co. (New York).

BAMBOO LAMP SHADES.—Lamp shades of colored bamboo classified at 25 per cent ad valorem under paragraph 175, tariff act of 1913, are claimed dutiable under paragraph 176 at 15 per cent.

Opinion by MCCLELLAND, G. A. On the authority of G. A. 7804 (T. D. 35848) the bamboo lamp shades were held dutiable as manufactures of wood under paragraph 176.

**No. 40842.**—Protests 794142, etc., of C. Bahnsen & Co. et al. (New York).

TEAZLED CLOTH.—Mohair cloth with a teazled surface, classified as pile fabrics at 45 per cent ad valorem under paragraph 309, tariff act of 1913, is claimed dutiable as cloth in chief value of mohair at 40 per cent under paragraph 308.

Opinion by BROWN, G. A. Upon stipulation of counsel the teazled cloth in question was held dutiable under paragraph 308. G. A. 7906 (T. D. 36403) followed.

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BEFORE BOARD 2, OCTOBER 27, 1916.

**No. 40843.**—Protest 797929 of Thomas J. Wilbee (Buffalo).

ZINC DROSS—UNWROUGHT METAL—AMERICAN MANUFACTURES.—Zinc dross in slabs, alleged to constitute the waste from certain spelter originally imported into Canada from the United States, classified as unwrought metal at 10 per cent ad valorem under paragraph 154, tariff act of 1913, is claimed entitled to free entry as goods of American manufacture under paragraph 404.

Opinion by FISCHER, G. A. Protest overruled, the regulations of the Secretary of the Treasury not having been complied with. United States *v.* Saunders (6 Ct. Cust. Appls., 86; T. D. 35337) cited.

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## (T. D. 36771.)

### *Mobilization of Regular Army Reserve.*

[Circular No. 67.]

TREASURY DEPARTMENT, *October 28, 1916.*

*To officers and employees of the Treasury Department:*

The following is quoted from a letter dated October 21, 1916, from the Acting Secretary of War relative to the mobilization of the Regular Army Reserve:

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The act of Congress for making further and more effectual provision for the national defense, approved June 3, 1916, contains the following:

SEC. 33. *Use of other departments of the Government.*—The President may, subject to such rules and regulations as in his judgment may be necessary, utilize the services of members and employees of all departments of the Government of the United States without expense to the individual reservist, for keeping in touch with, paying, and mobilizing the Regular Army Reserve, the Enlisted Reserve Corps, and other reserve organizations.

The regulations for the Regular Army Reserve, of which I inclose a copy, prescribe in paragraph 65 a method by which the services of members and employees of other departments of the Government may be utilized for the mobilization of the Regular Army Reserve. That paragraph reads as follows:

65. Under authority conferred by section 33 of the act of June 3, 1916, the services of members and employees of all departments of the Government of the United States may be utilized for the mobilization of the Regular Army Reserve. In addition to the mail notice sent to each reservist under paragraph 60, the officer in charge of reservists' records may request United States marshals, postmasters, census enumerators, internal-revenue agents, and representatives of the General Land Office, Geological Survey, Forest Service, Weather Bureau, and other bureaus to notify all reservists who can be reached by them that mobilization has been directed by the President.

As you will notice in other portions of these regulations, department commanders and others charged with keeping records of reservists will, when the President directs mobilization of the Regular Army Reserve, send to each member thereof notice of such mobilization with orders to report at some place named, and transportation request for the journey.

As members of the Regular Army Reserve are at liberty to live wherever they choose, within the limits of the United States, and as their addresses are reported only once each quarter, it is quite possible that if mobilization becomes necessary in the future formal notices thereof may not reach the members of this reserve force. It is believed that members and employees of your department stationed throughout the United States may, upon learning, even through newspaper notices thereof, that the President has directed mobilization, render valuable public service by informing such members of the Regular Army Reserve as they may meet in the discharge of their duties that such mobilization has been ordered. Each member of this reserve force is furnished a copy of these regulations and knows that in case of mobilization, in absence of any instructions directed to him personally, he should apply to the proper headquarters for orders. In order that the proper effect may be given to section 33 of the act of June 3, 1916, I would request that instructions be sent to the members and employees of your department to cooperate with representatives of the War Department in mobilizing the Regular Army Reserve if at any time in the future their cooperation is requested or if the fact that mobilization of the Regular Army Reserve has been directed reaches their notice.

The department will expect all officers and employees of the Treasury Department to cooperate, as far as possible, in carrying out the foregoing instructions from the War Department.

W. G. McADOO,
*Secretary of the Treasury.*

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## (T. D. 36772.)

### *The flag of the United States.*

[Circular No. 68.]

TREASURY DEPARTMENT, *October 28, 1916.*

*To officers and employees of the Treasury Department:*

The following Executive order, issued by the President under date of May 29, 1916, is quoted below for the information and guidance of all concerned:

The Executive order of October 29, 1912, is hereby revoked, and for it is substituted the following:

Whereas "An act to establish the flag of the United States," approved on the 4th of April, 1818, reading as follows:

SECTION 1. *Be it enacted, etc.*, That from and after the fourth day of July next the flag of the United States be thirteen horizontal stripes, alternate red and white; that the union be twenty stars, white in a blue field.

SEC. 2. *And be it further enacted*, That on the admission of every new State into the Union one star be added to the union of the flag and that such addition shall take effect on the fourth of July then next succeeding such admission—

fails to establish proportions; and

Whereas investigation shows some 66 different sizes of national flags and of varying proportions in use in the executive departments:

It is hereby ordered that national flags and union jacks for all departments of the Government, with the exception noted under (*a*), shall conform to the following proportions:

| | |
|---|---|
| Hoist (width) of flag | 1 |
| Fly (length) of flag | 1.9 |
| Hoist (width) of union | 7/13 |
| Fly (length) of union | .76 |
| Width of each stripe | 1/13 |

(*a*) *Exception.*—The colors carried by troops and camp colors shall be the sizes prescribed for the military service (Army and Navy).

*Limitation of the number of sizes.*—With the exception of colors under note (*a*), the sizes of flags manufactured or purchased for the Government departments will be limited to those with the following hoists:

| | Feet. | | Feet. |
|---|---|---|---|
| (1) | 20 | (7) | 5.14 |
| (2) (standard) | 19 | (8) | 5 |
| (3) | 14.35 | (9) | 3.52 |
| (4) | 12.19 | (10) | 2.90 |
| (5) | 10 | (11) | 2.37 |
| (6) | 8.94 | (12) | 1.31 |

*Union jacks.*—The size of the jack shall be the size of the union of the national flag with which it is flown.

*Position and size of stars.*—The position and size of each star for the union of the flag shall be as indicated on a plan which will be furnished to the depart-

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ments by the Navy Department. From this plan can be determined the location and size of stars for flags of any dimensions. Extra blue prints of this plan will be furnished upon application to the Navy Department.

*Order effective.*—All national flags and union jacks now on hand or for which contracts have been awarded shall be continued in use until unserviceable, but all those manufactured or purchased for Government use after the date of this order shall conform strictly to the dimensions and proportions herein prescribed.

*President's flag.*—The President's flag shall be in accordance with the plan accompanying and forming a part of this order. In case sizes are needed other than the two sizes shown on the plan, they shall be manufactured in the same proportions as those shown.

W. G. McAdoo,
*Secretary of the Treasury.*

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## (T. D. 36773.)

### *Drawback on confectionery and almond paste.*

Drawback on confectionery and almond paste manufactured by Henry Heide (Inc.), of New York, N. Y., with the use of imported almonds, gum arabic, gum senegal, and with the use of refined sugar produced in whole or in part from imported raw sugar.

Treasury Department, *October 31, 1916.*

Sir: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on confectionery and almond paste manufactured by Henry Heide (Inc.), of New York, N. Y., with the use of imported almonds, gum arabic, and gum senegal, and with the use of refined sugar produced in whole or in part from imported raw sugar.

The quantities of imported materials and refined sugar which may be taken as the basis for the allowance of drawback may equal the quantities used in the manufacture of the exported confectionery or almond paste, as shown by the sworn statement and schedule of the manufacturers, dated September 14, 1916, which is transmitted herewith.

Supplemental sworn schedules covering other kinds of confectionery or showing changes in formula may be filed, and upon verification of such supplemental schedules drawback may be allowed on the articles covered thereby.

Respectfully,
(98091.)

Wm. P. Malburn,
*Assistant Secretary.*

Collector of Customs, *New York,*

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(T. D. 36774.)

*Drawback on pumps.*

Drawback on pumps manufactured by the Morris Machine Works, of Baldwinsville, N. Y., with the use of imported electric motors.

TREASURY DEPARTMENT, *October 31, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on pumps manufactured or produced by the Morris Machine Works, of Baldwinsville, N. Y., with the use of imported electric motors.

The allowance shall not exceed one imported complete electric motor for each pump exported, and each unit will consist of two centrifugal pumps connected by shafts with the motor.

The sworn statement of the manufacturers, dated October 3, 1916, is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on pumps exported on and after September 16, 1916.

Respectfully, WM. P. MALBURN,
(105199.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Buffalo, N. Y.*

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(T. D. 36775.)

*Revocation of authority of the Globe Surety Co., of Kansas City, Mo.*

[Circular No. 65.]

TREASURY DEPARTMENT, *November 1, 1916.*

*To bond-approving officers and others concerned:*

This is to inform you that the Globe Surety Co., of Kansas City, Mo., has ceased to transact a fidelity and surety insurance and reinsurance business, and the authority heretofore granted to this company under the provisions of the act of Congress of August 13, 1894 (28 Stats., pp. 279-280), as amended by the act of Congress of March 23, 1910 (36 Stats., p. 241), is hereby revoked.

All officers of the United States having knowledge of any existing claim, or of the occurrence of any event, or of the existence of any circumstances which may hereafter result in a claim against the Globe Surety Co. are hereby directed to communicate the facts in detail to the Section of Surety Bonds, Treasury Department, within 30 days after the receipt of this notice. This information should include the name of the principal, the date and amount of the bond, the nature of the claim, the circumstances out of which it arose, and the status of the claim at the time of the report.

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All officers and employees of the United States who have been bonded by the Globe Surety Co. who disburse or receive Government moneys or other funds for which their bonds are liable should promptly submit their final accounts for audit by the Government, in order that any differences may be determined and adjusted without delay.

It will not be necessary for bond-approving officers of the Government to require the execution of new bonds in lieu of those previously executed with the Globe Surety Co., as all bonds of that company in which the Government is interested have expired or been reinsured in acceptable surety companies.

Bond-approving officers are directed to acknowledge the receipt of this circular, and to notify the Section of Surety Bonds, Treasury Department, promptly of their compliance with these instructions.

ANDREW J. PETERS,
*Acting Secretary of the Treasury.*

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(T. D. 36776.)

*Revocation of authority of the Southwestern Surety Insurance Co., of Denison, Tex.*

[Circular No. 66.]

TREASURY DEPARTMENT, *November 1, 1916.*

*To bond-approving officers and others concerned:*

This is to inform you that the Southwestern Surety Insurance Co., of Denison, Tex., has ceased to transact a fidelity and surety insurance and reinsurance business, and the authority heretofore granted to this company under the provisions of the act of Congress of August 13, 1894 (28 Stats., pp. 279–280), as amended by the act of Congress of March 23, 1910 (36 Stats., p. 241), is hereby revoked.

On February 29, 1916, the Southern Surety Co., of St. Louis, Mo., reinsured, under the terms of an indemnity agreement approved by the Treasury Department all of the bonds executed or reinsured by the Southwestern Surety Insurance Co. wherein the Government had any interest of a direct or indirect nature. It will therefore not be necessary for bond-approving officers to require the execution of new bonds in lieu of those previously executed by the Southwestern Surety Insurance Co. at this time. This indemnity agreement was accompanied by what purports to be a complete list of all bonds executed on behalf of the Government by the Southwestern Surety Insurance Co., which list will be transmitted to the heads of the various departments of the Government from time to time to be checked with the records of those departments.

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All officers of the United States having knowledge of any existing claim, or of the occurrence of any event, or of the existence of any circumstances which may hereafter result in a claim against the Southwestern Surety Insurance Co., are hereby directed to communicate the facts in detail to the Section of Surety Bonds, Treasury Department, within 30 days after the receipt of this notice. This information should include the name of the principal, the date and amount of the bond, the nature of the claim, the circumstances out of which it arose, and the status of the claim at the time of the report.

All officers and employees of the United States who have been bonded by the Southwestern Surety Insurance Co. who disburse or receive Government moneys or other funds for which their bonds are liable should promptly submit their final accounts for audit by the Government, in order that any differences may be determined and adjusted without delay.

Bond-approving officers are directed to acknowledge the receipt of this circular, and to notify the Section of Surety Bonds, Treasury Department, promptly of their compliance with these instructions.

ANDREW J. PETERS,
*Acting Secretary of the Treasury.*

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(T. D. 36777.)

*Dolls, dressed.*

**Dolls, when the garments in which they are dressed are made wholly or in part of lace or imitation lace, or are embroidered, tamboured, appliquéd, or scalloped, and the dressed doll is composed in chief value of yarns, threads, or filaments, dutiable at 60 per cent ad valorem under paragraph 358, tariff act of 1913.**

TREASURY DEPARTMENT, *October 31, 1916.*

SIR: The department is in receipt of your letter of the 9th instant, inclosing a communication from the appraiser at your port relative to the proposed change in practice in regard to the classification of dolls dressed with lace-trimmed, embroidered, tamboured, appliquéd, or scalloped garments.

It appears that it has been the practice to assess duty on such merchandise as dolls at the rate of 35 per cent ad valorem under paragraph 342 of the tariff act, but it is proposed to change the classification of such dolls, if in chief value of yarns, threads, or filaments, to 60 per cent ad valorem under paragraph 358.

In view of T. D. 34930 and others relative to embroidered hosiery, the department concurs in the change of practice. (Note also T. D. 34547 and T. D. 35063.) You will therefore assess duty at the rate of 60 per cent ad valorem under paragraph 358 of the tariff act of

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1913 on dolls imported or withdrawn from warehouse 30 days after the date hereof when the garments in which the dolls are dressed are made wholly or in part of lace or of imitation lace, or are embroidered, tamboured, appliquéd, or scalloped, and the dressed doll is composed in chief value of yarns, threads, or filaments.

Respectfully, WM. P. MALBURN,
(68059.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36778.)

*Nori—Crude seaweed—Prepared vegetables.*

Appeal directed from decisions of the Board of United States General Appraisers of October 20, 1916, Abstracts 40309 and 40310, involving the classification of certain nori.

TREASURY DEPARTMENT, *November 2, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 28th ultimo, inviting attention to the decisions of the Board of United States General Appraisers of October 20, 1916, Abstracts 40309 and 40310, wherein certain nori packed in tin boxes or cans was held by the board to be free of duty as crude seaweed under paragraph 552 of the tariff act of October 3, 1913, rather than dutiable as assessed at 25 per cent ad valorem as prepared vegetables under paragraph 200 of the said act.

You are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decisions so far as they pertain to the merchandise in question, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, WM. P. MALBURN,
(18841.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

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(T. D. 36779.)

*Feathers and downs.*

Feathers and downs sorted or cleaned either by hand or machinery, ready for use, dutiable at the rate of 40 per cent ad valorem as feathers or downs advanced or manufactured, not suitable for use as millinery ornaments, under paragraph 347, tariff act of 1913.

TREASURY DEPARTMENT, *November 2, 1916.*

SIR: The department refers to your letter of September 19, 1916, and other correspondence, in regard to the classification of feathers

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and downs which have been sorted or cleaned either by hand or machinery.

It appears that it has been the practice to assess duty on such merchandise as crude feathers or downs at the rate of 20 per cent ad valorem under paragraph 347 of the tariff act of 1913, and it is proposed to change the classification to that of feathers or downs, advanced or manufactured, dutiable at the rate of 40 per cent ad valorem under the provisions of the same paragraph for feathers or downs "dressed, colored, or otherwise advanced or manufactured in any manner, and not suitable for use as millinery ornaments."

It appears that in the process of hand sorting the feathers are strewn on a board and the dark feathers separated from the light and one-half to two-thirds of the dirt removed. In the machine treatment it appears that the feathers are manipulated in such a manner that the down is separated from the more mature feathers and some of the downy part at the base of the feather is broken off, and are also subjected to a blowing process, the entire operation separating the down from the feathers and in such a manner that each quality may be baled separately, and eliminating the dirt.

In both the hand and machine processes it appears that the feathers and downs are subjected to a manipulation which advances them beyond their condition as plucked from the bird and prepares them for their ultimate use—the filling of beds, pillows, cushions, etc. They would therefore appear to be advanced beyond the condition of crude. (Note T. D. 32251 and T. D. 33410.)

The department therefore approves the proposed change in classification, and you will assess duties on feathers and downs of the character in question imported or withdrawn from warehouse 30 days after the date hereof at the rate of 40 per cent ad valorem under paragraph 347 of the tariff act of October 3, 1913.

Respectfully, WM. P. MALBURN,
(96799.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36780.)

*Drawback on alcohol.*

Drawback on alcohol manufactured by the Purity Distilling Co., of Cambridge, Mass., with the use of imported molasses.

TREASURY DEPARTMENT, *November 2, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on alcohol manu-

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factured by the Purity Distilling Co., of Cambridge, Mass., with the use solely of imported molasses.

A manufacturing record shall be kept in the manner prescribed in the sworn statement of the manufacturers, dated October 14, 1916, which is transmitted herewith for filing in your office, and at the end of each monthly period of manufacture there shall be filed a certificate of manufacture and abstract from such manufacturing record, showing, for the period, the quantity, value, and identity of the imported molasses used, the quantities and values of alcohol and fusel oil obtained, and the quantity and value of waste resulting.

The quantity of imported material which may be taken as a basis for the allowance of drawback may equal the quantity used in the manufacture of the exported alcohol less the quantity which the value of the waste will replace, the duties paid on such quantity of imported material to be distributed between the principal product (alcohol) and the by-product (fusel oil) according to their relative values, provided that the drawback distributed to the fusel oil shall not exceed the maximum allowance on by-products prescribed by the drawback law, as interpreted by T. D. 33809 of October 25, 1913.

Drawback may be allowed under these regulations on alcohol exported on and after September 8, 1916.

Respectfully, WM. P. MALBURN,
(105500.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

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(T. D. 36781.)

*Drawback on gasoline motors.*

Drawback allowed on gasoline motors manufactured by the Rochester Motors Co. (Inc.), of Rochester, N. Y., with the use in part of imported clutch linings.

TREASURY DEPARTMENT, *November 3, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on gasoline motors manufactured by the Rochester Motors Co. (Inc.), of Rochester, N. Y., with the use in part of imported clutch linings.

The allowance shall not exceed the number of imported clutch linings appearing in the exported motors, as shown by the sworn statement of the manufacturers, dated October 7, 1916, which is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on gasoline motors exported on and after September 30, 1916.

Respectfully, WM. P. MALBURN,
(105535.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36782.)

*Gloves of horse hide, lined with fur.*

Gloves of horse hide, lined with fur, horse hide chief value, free of duty under paragraph 495, tariff act of 1913.

TREASURY DEPARTMENT, *November 3, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 11th ultimo, relative to the classification of certain horse-hide gloves covered by entry No. 28552.

The gloves in question, it appears, are invoiced as "men's horse-hide gloves, lined lamb's fur." The appraiser has returned the merchandise as men's horse-hide gloves, fur lined, horse hide chief value, free under paragraph 495 of the tariff act.

Paragraph 495 provides for the free entry of gloves made wholly or in chief value of leather made from horse hides. Paragraph 361 provides for gloves not specially provided for, made wholly or in chief value of leather, and paragraphs 362 and 363 specify rates applicable to various kinds, such as schmaschen (of sheep origin) and other men's, women's, and children's gloves. Paragraph 364 provides that "in addition to the foregoing rates there shall be paid the following cumulative duties: On all leather gloves * * *, when lined with fur, $2 per dozen pairs."

The language in paragraph 364 covering cumulative duties, "in addition to the foregoing rates on all leather gloves," appears to indicate an intention to limit said cumulative duties to the particular gloves covered by paragraphs 361, 362, and 363, i. e., gloves made wholly or in chief value of leather not specially provided for, which would not cover horse-hide leather gloves.

The department, therefore, concurs in the opinion that horse-hide leather gloves, lined with fur, horse hide chief value, are free of duty under paragraph 495 of the tariff act of 1913.

You will be governed accordingly.

Respectfully, WM. P. MALBURN,
(76404.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36783.)

*Drawback on cigarette holders, etc.*

Drawback allowed on cigarette holders, cigar holders, and mouthpieces for pipes manufactured by Henry E. Michaelis and William Perlman, of Brooklyn, N. Y., and Louis Gottheimer, of New York, N. Y., for the account of A. Orlik, of New York, N. Y., with the use of imported galilith and esoloid.

TREASURY DEPARTMENT, *November 4, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations

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(chapter 18 of the Customs Regulations of 1915) on cigarette holders, cigar holders, and mouthpieces for pipes manufactured by Henry E. Michaelis, of Brooklyn, N. Y., William Perlman, of Brooklyn, N. Y., and Louis Gottheimer, of New York, N. Y., for the account of Alfred Orlik, of New York, N. Y., with the use of imported gallilith and esoloid.

A manufacturing record shall be kept in the manner described in the sworn statements of the applicant and the manufacturers, dated July 31, 1916, August 11, 1916, July 24, 1916, and October 2, 1916, respectively, which shall show, in addition to the usual import data, the quantity of imported gallilith and esoloid used in the manufacture of the cigarette holders, cigar holders, and mouthpieces for pipes and the number of holders of each kind and mouthpieces produced, together with the quantity of waste incurred in the process of manufacture.

The allowance shall not exceed the quantity of imported gallilith and esoloid appearing in the exported holders of each kind and mouthpieces, plus the allowance for waste.

Drawback may be allowed under these regulations on cigarette and cigar holders and mouthpieces for pipes exported on and after February 2, 1916.

Respectfully, WM. P. MALBURN,
(104633.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36784.)

*Merchandise imported through the mails.*

Appeal directed from decisions of the Board of United States General Appraisers of September 15, 1916, Abstract 40124, and September 20, 1916, G. A. 7960 (T. D. 36686), involving the protests on certain merchandise imported through the mails.

TREASURY DEPARTMENT, *November 6, 1916.*

SIR: I have to refer to your letter of the 2d instant relative to the decisions of the Board of United States General Appraisers of September 15, 1916, Abstract 40124, and September 20, 1916, G. A. 7960 (T. D. 36686), wherein the protests covering certain merchandise imported through the mails were sustained by the board, notwithstanding that the protests were filed before the liquidation of the entries.

I have to request that you file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decisions, in accordance with the

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provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, WM. P. MALBURN,
(104780.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

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(T. D. 36785.)

*Common carrier.*

**Approving bond of Pacific Steamship Co. for the transportation and lading and unlading of dutiable merchandise.**

TREASURY DEPARTMENT, *November 6, 1916.*

SIR: The department is in receipt of your letter of the 25th ultimo, transmitting an application and bond executed by the Pacific Steamship Co. to bond for the transportation of dutiable merchandise, under the provisions of sections 3000, 3001, 3005, and 3006 of the Revised Statutes and the act of June 10, 1880, and for the lading and unlading of cargoes from vessels of the company under the act of February 13, 1911.

The application and bond have been approved and one copy of said bond is transmitted herewith for the files of your office.

Respectfully, WM. P. MALBURN,
(105596.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Seattle, Wash.*

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(T. D. 36786.)

*Internal-revenue tax—Imported wines.*

**Regulations governing the collection of internal-revenue tax under the act of September 8, 1916, on imported still, sparkling, or artificially carbonated wines.**

TREASURY DEPARTMENT, *November 6, 1916.*

*To collectors of customs and others concerned:*

Attention is invited to the appended regulations, signed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury, for the collection of the internal-revenue tax upon imported wines under section 402 of the act of Congress approved September 8, 1916.

In order to assist in the collection of said tax, collectors of customs will observe the following procedure:

(*a*) They will not pass any consumption entry or withdrawal for consumption entry covering imported wines or issue any delivery

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permit therefor unless the entry bears a certificate signed by the collector or deputy collector of internal revenue, showing that the required stamps to pay the internal-revenue tax thereon have been purchased, and they will notify all importers that hereafter an additional copy of the entry should be prepared by them to be filed with the collector of internal revenue.

(*b*) They will cause the return of the gauge of wines in barrels, casks, and similar containers to be expedited and an extra copy of the gauger's return to be made, which copy will be immediately delivered to the collector of internal revenue as a basis for the collection of the tax due.

(*c*) They will require the appraiser, in making his return on invoices covering wines in bottles, jugs, or similar containers, to state the exact quantity imported. Upon receipt of said return, the collector will certify to the collector of internal revenue the exact quantity of wines contained in the importation.

(*d*) The gauger or the appraiser, as the case may be, shall report separately whether the wine is a still wine (including vermuth), a sparkling wine (including champagne), or an artificially carbonated wine, and shall also report separately still wine containing not more than 14 per cent absolute alcohol; still wine containing more than 14 per cent and not exceeding 21 per cent absolute alcohol; and still wine containing more than 21 per cent and not exceeding 24 per cent absolute alcohol.

(105482.) WM. P. MALBURN, *Assistant Secretary.*

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TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
*Washington, D. C., November 6, 1916.*

*To collectors of internal revenue and others concerned:*

In view of the many large consignments of imported wine and the difficulty experienced in affixing to each cask or case an internal-revenue stamp, before removal of the wine from the customhouse, the stamping of such casks or cases will not hereafter be required, provided the following instructions are carefully complied with:

(1) The importer or his agent, prior to the removal of the wines from the customhouse, will obtain from the collector of internal revenue of the district stamps sufficient to cover the entire quantity of wine invoiced to him.

(2) The customs entry in such cases will be prepared in triplicate, two copies of which will be filed with the collector of internal revenue, to one copy of which will be attached the required stamps uncanceled.

(3) Upon receipt of the entry, the collector will indorse upon one copy a certificate, under his official seal, setting forth that the required revenue stamps covering the wine therein described have been purchased, and will then deliver such copy so certified to the importer to be filed by him with the collector of customs.



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(4) The stamps purchased, as above provided, will remain filed with the duplicate entry, uncanceled until a report of the gauge or inspection of the wine by a customs officer has been received, showing the actual taxable quantity of wine covered by the entry.

(5) When the amount of tax has been determined from the report of inspection, a sufficient number of the retained stamps to cover the tax due will then be permanently affixed to the duplicate entry and duly canceled. In the event that more stamps have been retained with the entry than required, the remaining unused stamps will be returned to the importer. If, on the other hand, the retained stamps are found to be insufficient to cover the tax due, additional stamps should be at once purchased by the importer and likewise be affixed to the entry and canceled.

(6) A daily list should be prepared and a record kept of all stamps purchased for imported wine, and such daily list, together with the corresponding entry papers and attached stamps, will be forwarded to this office at the end of each month.

G. E. FLETCHER,
*Acting Commissioner of Internal Revenue.*

Approved:
WM. P. MALBURN,
*Acting Secertary of the Treasury.*

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## (T. D. 36787—G. A. 7983.)

### *Crude india rubber in sheets.*

A commodity invoiced as "raw plantation rubber sheet," which is imported in the form of sheets about 12 inches wide, 20 inches long, and one-fourth of an inch thick, and which the chemist reports contains resin having the characteristics of shellac and mineral matter in part of talc (the talc being sprinkled between the sheets to keep them from sticking together), and which is used in waterproofing cloth to be made into ponchos, is entitled to free entry as "india rubber, crude" under paragraph 513, tariff act of 1913, and is not dutiable as an unenumerated manufactured article under paragraph 385.

United States General Appraisers, New York, October 30, 1916.

**In the matter of protest 790597 of Lunham & Moore against the assessment of duty by the collector of customs at the port of New York.**

[Reversed.]

*Henry W. Baird* for the importers
*Bert Hansen*, Assistant Attorney General (*Samuel Isenschmid*, special attorney), for the United States.

Before Board 3 (WAITE and HAY, General Appraisers).

WAITE, *General Appraiser:* The importation in this case is invoiced as "9 cases raw plantation rubber sheet." It was assessed as an unenumerated manufactured article under paragraph 385, tariff act of 1913, and is claimed to be free of duty under paragraph 513, as a crude rubber. The paragraphs in question are in the following language:

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385. That there shall be levied, collected, and paid on the importation of all raw or unmanufactured articles not enumerated or provided for in this section, a duty of 10 per centum ad valorem, and on all articles manufactured, in whole or in part, not provided for in this section, a duty of 15 per centum ad valorem.

513. India rubber, crude, and milk of, and scrap or refuse india rubber, fit only for remanufacture.

Testimony was given on behalf of the importers, wherein it is shown that this material has been imported for the last three years or thereabouts from the west coast of Africa under the name of "plantation rubber." The witness further testified that he had been in the rubber business for considerable time and had had experience, and that he considered it crude rubber; that this and the previous importations, of which there had been several, were designed for the waterproofing of cloth used in the making of ponchos for the United States Government. It appears that it had been passed free until this importation was received, when, under instruction from the Treasury Department (T. D. 34897), the classification was changed from that of crude rubber to that of an unenumerated article. The return of the appraiser, to which the collector refers, is as follows:

The merchandise, claimed to be crude rubber sheets, consists of a gum which has been washed, cleaned, dried, and pressed into sheets for convenience in handling in transportation, and contains elements which are not natural to the gum in its natural or crude state. It was returned for duty as a nonenumerated manufactured article at 15 per cent ad valorem under paragraph 385, tariff act of 1913, in accordance with department instructions in T. D. 34897.

T. D. 34897 is a communication from the Assistant Secretary of the Treasury instructing collectors to assess duty on this material at 15 per cent ad valorem under paragraph 385 for the reason that it contains substances not found in crude rubber, and for the reason that the chemist has stated, as his opinion, that it is not crude rubber. It is admitted, however, that it is a gum, a colloid, as distinguished from a crystalloid, formation; and it is reported by the analyst to be caoutchouc, which may or may not be a rubber, as we understand the meaning of that term.

A sample of the goods as presented to the board at the hearing consists of a sheet of a moderately stiff gummy substance, reddish brown in color, elastic, and having what seems to be a slight odor of rubber. A representative of the importers swore upon the stand that it is imported in sheets about 12 inches wide and 20 inches long. The piece introduced in evidence is about one-quarter of an inch thick.

The Government, by the testimony of the examiner and the analyst given in its behalf, denies that it is rubber, but says it is gum. The

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witnesses do not speak with any positiveness or with that apparent knowledge of the elements of rubber which inspires one with confidence that they can distinguish between the commodity before us and what is conceded to be rubber. They do, however, state as their opinion that this is not true rubber, but a gum. They do not wish to say what its origin is; in fact, there is nothing in the evidence which speaks with any positiveness of the sources of this commodity except what may be gathered from the testimony of a representative of the importers that it comes from West Africa, and has always, so far as he knows, been considered to be from the rubber plant or tree. The report of the Government chemist is as follows:

> Gum, containing a hydrocarbon similar in physical characteristics to caoutchouc (resilient but less cohesive); contains resin, having the characteristics of shellac; vegetable matter, probably natural to the gum; mineral matter, 7.75 per cent, partly of talc.

The only reason for holding this a manufactured article seems to be that it contains foreign substances, to wit, talc and shellac. This shellac is reported to be resin having the characteristics of shellac. Rubber in its natural or crude state varies in its consistency, some varieties being harder than others. That which comes from the west coast of Africa seems to be soft and sticky. In preparing rubber for shipment it is coagulated and the moisture evaporated to a certain extent, after which it is dried and sometimes cured by being passed through smoke, which gives it a smoky odor. The smoky odor we do not consider, however, an essential characteristic of rubber. It is admitted that talc or soapstone is found. This is explained by reason of the fact that the rubber is so sticky that talc is put between the layers to facilitate their handling. We do not think the presence of talc and shellac would constitute this commodity a manufactured article even without explanation.

A number of works have been written upon rubber. Reference is made to the literature generally of the rubber industry, and while not strictly evidence in this case we feel at liberty to refer to a standard work with reference to the well-known characteristics and treatment of rubber. In a book called "The Chemistry of India Rubber," by Carl Otto Weber, we learn (p. 1) that—

> No class of bodies offers such formidable manipulative difficulties to the investigating chemist as the remarkable group of colloids comprised under the collective name of india rubber. These difficulties are physical rather than chemical.

And, further:

> India rubber, as is well known, is the product of the coagulation of the milky juices (emulsions) of a large number of trees, creepers, and shrubs, comparable in this respect to the oils, and more particularly to the terpenes.

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And, again (p. 151):

The number of different resins and waxes, or wax-like substances, and pitches which have been used in connection with rubber, or which are supposed to impart new and valuable properties to rubber goods, is almost endless. * * * In soft-rubber goods only a very moderate use is and should be made of these substances, but hard-rubber goods often contain very large proportions of resins, chiefly shellac and amber.

In a book entitled "India-Rubber Laboratory Practice," by W. A. Caspari, on page 56 we find the following:

Since all rubbers are themselves more or less resinous, it would seem a very natural thing to dilute rubber with added resin.

We think we may assume that resin is found in all crude rubber. Resins are used for different purposes, one of which seems to be to harden the rubber so it may be handled. We think there is not enough testimony on the part of the Government to overthrow the testimony given on behalf of the importers, when considered with the fact that this commodity has been imported into the United States, passed and used as rubber, even the report of the chemist showing that it has characteristics of caoutchouc. On the other hand, the principal reason for departing from the previous practice of passing it as rubber is the fact merely that it contains talc and a resinous substance, or resin with characteristics of shellac. The presence of both, it seems to us, is explained by the record in this case; and, as stated above, we are of the opinion that their presence unexplained, other than by the fact that they were stated to be found in varying quantities, would not be sufficient to warrant the holding that the commodity is a manufacured article. There is nothing in the record to show that they were put in for the purpose of producing any definite or particular thing; and the fact remains that the article under consideration is in a crude state, and is used for the same purpose for which rubber is used, and, in our opinion, resembles crude rubber as the record in this case reveals crude rubber, samples of which were introduced as illustrative exhibits. We therefore sustain the protest, holding the merchandise to be free of duty as "india rubber, crude," under paragraph 513. Note Magee *v.* United States (4 Ct. Cust. Appls., 443; T. D. 33874).

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(T. D. 36788—G. A. 7984.)

*Chicle.*

Sap of the sapodilla tree, from which the moisture has been expelled by means of artificial heat until it becomes a coagulated mass, which is then, by certain processes, ground and reduced to granulated form, held to be chicle advanced in value by a "process or treatment beyond that necessary

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to the proper packing" thereof, and subject to duty at 20 cents per pound under paragraph 36, tariff act of 1913.—G. A. 6303 (T. D. 27162) cited; Abstract 39077 distinguished.

United States General Appraisers, New York, November 2, 1916.

In the matter of protests 799146, etc., of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

*Crim & Wemple* (*Wm. L. Wemple* of counsel) for the importers.

*Bert Hanson*, Assistant Attorney General (*Chas. D. Lawrence*, special attorney), for the United States.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers; Brown, G. A., not participating).

McClelland, *General Appraiser:* The merchandise involved was assessed with duty by the collector of customs at the port of New York at the rate of 20 cents per pound, under paragraph 36 of the tariff act of 1913, as chicle refined and chicle advanced in value. It was shown that chicle is obtained from the sap of the sapodilla tree; that as the sap is drawn from the tree it is in liquid form, about the consistency of cream, and that, in order to bring it to the condition in which this substance was imported, it was first coagulated by being subjected to artificial heat. It is then broken into chunks and ground into the granulated form shown by the sample, Exhibit 1. According to the testimony of the witnesses called in support of the claim of protestants that it is crude chicle and subject to duty at 15 cents per pound under paragraph 36, the purposes of subjecting the original sap and the coagulated mass to these processes were (1) to expel the moisture, and (2) for convenience in bagging for transportation.

That part of the paragraph of the law under which duty was assessed and under which claim is made is as follows:

36. * * * Chicle, crude, 15 cents per pound; refined or advanced in value by drying, straining, or any other process or treatment whatever beyond that essential to the proper packing, 20 cents per pound; * * *.

The query therefore is whether this chicle was before importation "refined or advanced in value by drying, straining, or any other process or treatment whatever beyond that essential to the proper packing" for transportation. The answer to this query may depend largely upon whether by the record it is shown that this chicle was imported into the United States in the crudest form to which it is known to our commerce (G. A. 6303; T. D. 27162), and, while the record is not as clear on this point as it might be, we think there is sufficient in it to show that there is known to our commerce a chicle in a less advanced condition. The witness Bowl testified:

Q. Have you ever dealt in the lumps or cakes which you have described bought or sold in this country?—A. I believe some has been resold in this country.

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Q. Are there desiccating plants in this country to your knowledge?—A. I believe there are.

In this connection the following from the testimony of the witness Cox is also pertinent:

Q. When does it become chicle, as it comes from the tree or after evaporation of the liquid moisture?—A. It becomes chicle after it is coagulated.

Thus it is made to appear that the liquid sap becomes the commercial article known as chicle after the moisture is evaporated therefrom to the extent that the mass is solidified. This solidified mass is unquestionably chicle in its crude form, and in this condition, as appears from the testimony of the witness Bowl, above quoted, it is brought into the markets of the United States and subjected to processes in desiccating plants which brings it to the condition represented by the merchandise under consideration. It would therefore seem to be the fact that the processes to which this chicle had been subjected before importation were "beyond that necessary to the proper packing" thereof, and that it was advanced in value by these processes is, we think, conclusively shown by the following from the testimony of the witness Cox:

Q. (By General Appraiser McClelland.) Then why grind it?—A. Because we can not use it; it is not refined chicle. We can only use refined chicle. It would be no use to us in its original state. It could not be used for chewing gum.

Q. The point I want to know from you is when it becomes chicle. You said it became chicle when it was coagulated?—A. It is known as chicle.

Q. Then, after that stage why was it granulated or ground?—A. To remove the moisture.

Q. Have you purchased it in the coagulated condition?—A. In the desiccated condition; in the granulated condition.

Q. No——A. In the cakes where it is coagulated?

Q. Yes.—A. Yes, sir.

Q. How does the value of it in cake condition compare with it in the ground condition in which this was imported?—A. The results of the cake would be of the same value as the cake itself.

Q. No; how do you buy it, by the——A. By the pound.

Q. How much was it worth in the cake as compared with the value ground?—A. The same value. Not per pound.

Q. I am talking about the value in the cake as compared with the value ground. I asked you——A. Not per pound, because when the moisture is reduced the weight is less, but the unit has the same value.

Q. It is chicle when it is in the cake form, is it?—A. Yes, sir.

Q. It is chicle when it is imported?—A. It is crude chicle in the cake form. It is chicle combined with moisture and bark.

Q. Now, you have just said it was crude chicle in the cake form; what is it in the ground form?—A. In the state this is we call it desiccated chicle.

Q. Is it worth any more a pound in the ground condition than in the cake condition?—A. Per pound, yes, sir.

Q. (By Mr. Wemple.) Is it advanced in quality any by this removal of the moisture?—A. Well, for chewing gum purposes it is.

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Our attention is directed to Abstract 39077, wherein certain chicle which had been subjected to a drying process for the purpose of expelling the moisture was held by the board to be crude chicle, but we think it clear from the wording of that decision that the chicle there passed upon had not been advanced in condition and value to the extent that the chicle herein involved had been before importation.

We quote the following from the language of Judge Brown, writing for the board:

> Anyway, there is no legally sufficient evidence in the record upon which to base a finding that the chicle has been advanced in value by any process of drying, straining, or refining or other treatment.

Therefore we think that the issue passed upon is easily distinguishable from that in the case at bar.

The protest is overruled and the decision of the collector affirmed.

No evidence having been offered in support of the issue involving the 5 per cent discount of duties under subsection 7 of paragraph J of section 4 of said tariff act, the claims in respect thereof are hereby overruled.

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## *Abstracts of decisions of the Board of General Appraisers.*

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*Board 1*—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

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BEFORE BOARD 1, OCTOBER 30, 1916.

**No. 40344.—Protests 797702, etc., of Frank P. Dow Co. et al. (Seattle).**

SEA-GRASS FURNITURE.—Furniture classified as manufactures of grass at 25 per cent ad valorem under paragraph 368, tariff act of 1913, is claimed dutiable as manufactures of wood at 15 per cent under paragraph 176.

Opinion by MCCLELLAND, G. A. Upon stipulation of counsel the furniture in question was held dutiable under paragraph 176. Abstract 39130 followed.

**No. 40345.—Protest 802622 of G. D'Elia (New York).**

AMBER BEAD NECKLACES.—Beads graduated on silk strings, and clasps imported separately but invoiced as an entirety as "Ambra piccola," classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as beads loosely strung at 35 per cent, or as articles composed wholly or in chief value of beads at 50 per cent under the provisions of paragraph 333, or as manufactures of amber at 10 per cent under paragraph 367.

Opinion by SULLIVAN, G. A. It was found that the Ambra piccola are composed of genuine amber, that the beads are imported in properly graduated strings, and that to make a complete necklace, in addition to the clasp and beads, a small screw is used. The beads are restrung here. They were held dutiable as beaded articles under the latter part of paragraph 333. American Bead Co. *v.* United States (7 Ct. Cust. Appls., —; T. D. 36259), Mamluck *v.* United States (6 Ct. Cust. Appls., 556; T. D. 36198), Wolff *v.* United States (7 Ct. Cust. Appls., —; T. D. 36463), and American Bead Co. *v.* United States (7 Ct. Cust. Appls., —; T. D. 36465) followed.

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**No. 40346.**—Protests 791714, etc., of Wagner Bros. & Co. (New York).

COMPASSES—PEDOMETERS.—Compasses, pedometers, and rotameters classified at 60 per cent ad valorem under paragraph 356, and reading glasses and tripod magnifying glasses classified as optical instruments at 35 per cent under paragraph 93, tariff act of 1913, are claimed dutiable as microscopes at 25 per cent under paragraph 94 and manufactures of metal at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. Upon stipulation of counsel the pocket compasses, pedometers, and rotameters were held dutiable at 20 per cent under paragraph 167. G. A. 7824 (T. D. 35949), United States *v.* Sussfeld (7 Ct. Cust. Appls., —; T. D. 36454), and Abstract 39074 followed. The reading glasses and tripod magnifying glasses were held dutiable as microscopes at 25 per cent under paragraph 94. Protests sustained in part.

**No. 40347.**—Protests 789033, etc., of Scheuer & Co. (New York).

TOYS—PAPER HATS—HALLOWEEN FAVORS.—The merchandise in question was classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913. Many claims are made under various paragraphs.

Opinion by SULLIVAN, G. A. The merchandise was held dutiable as follows: (1) Hats and paper boxes in chief value of crape paper at 30 per cent under paragraph 323; (2) wooden cabinets as manufactures of wood at 15 per cent under paragraph 176; (3) imitation hatchets, Halloween favors, and match holders as manufactures of paper at 25 per cent under paragraph 332. Illfelder *v.* United States (1 Ct. Cust. Appls., 109; T. D. 31115) followed. Protests sustained in part.

**No. 40348.**—Protest 781599 of Calumet Manufacturing Co. and protests 758948, etc., of Martin D. Levy & Co. (New York).

PAPER HATS—TOYS.—Hats made of paper, used as souvenirs at carnivals by adults, classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as manufactures of paper or crape or tissue paper at 25 per cent under paragraph 332 or at 30 per cent under paragraph 323.

Opinions by SULLIVAN, G. A. On the authority of Abstracts 38875 and 39092 the articles manufactured from tissue paper were held dutiable at 30 per cent under paragraph 323 and the other items as manufactures of paper at 25 per cent under paragraph 332. Protests sustained in part.

**No. 40349.**—Protests 775370-56286, etc., of Gallagher & Ascher (Chicago).

SIGNS OF METAL, CELLULOID, AND CARDBOARD.—Signs composed of metal, celluloid, and cardboard, classified as manufactures in chief value of celluloid at 40 per cent ad valorem under paragraph 25, tariff act of 1913, are claimed dutiable as manufactures in chief value of metal at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. It was found that tin is the component material of chief value. The signs were held dutiable as manufactures of metal under paragraph 167.

**No. 40350.**—Protest 765862 of Wm. E. Flory & Co. (New York).

METAL MATERIALS FOR CHAINS.—The appraiser reports the articles in question to be metal spring rings used in the manufacture of chains. They were classified as parts of jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, and are claimed dutiable under the same paragraph at 50 per cent.

Opinion by SULLIVAN, G. A. The metal spring rings in question were held dutiable at 50 per cent under paragraph 356. Mamluck *v.* United States (6 Ct. Cust. Appls., 556; T. D. 36198) followed.

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**No. 40351.**—Protests 764906, etc., of Samstag & Hilder Bros. (New York).

PINS WITH GLASS HEADS.—Pins with steel stems and tops of paste glass, classified as manufactures of paste at 30 per cent ad valorem under paragraph 95, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. From the evidence it was found that the metal in these pins is the component material of chief value. They were held dutiable at 20 per cent under paragraph 167. United States *v.* Fondeville (7 Ct. Cust. Appls., —; T. D. 36457) cited.

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BEFORE BOARD 2, OCTOBER 30, 1916.

**No. 40352.**—Protests 784608, etc., of Edw. Benneche & Bro. (New York).

BUTTON SHANKS, SILVER PLATED.—Button shanks composed of brass and plated with silver, classified at 50 per cent ad valorem under paragraph 167, tariff act of 1913, are claimed dutiable as parts of metal buttons at 15 per cent under paragraph 151, or as parts of buttons at 40 per cent under paragraph 339.

Opinion by FISCHER, G. A. On the authority of G. A. 7807 (T. D. 35877) silver-plated metal button shanks were held dutiable at 40 per cent under paragraph 339.

**No. 40353.**—Protest 760864 of Kronfeld, Saunders & Co. (New York).

PLATED WARE.—Bag frames composed of metal, gold or silver plated, classified at 50 per cent ad valorem under paragraph 167, tariff act of 1913, are claimed dutiable as manufactures of metal, not plated, at 20 per cent under the same paragraph.

Opinion by FISCHER, G. A. It was found that the articles invoiced as oxidized had neither gold nor silver plating thereon. They were held dutiable at 20 per cent under paragraph 167.

**No. 40354.**—Protest 788411 of F. H. Shallus (Baltimore).

STEEL INGOTS.—Steel ingots made by the crucible process, classified at 15 per cent ad valorem under paragraph 110, tariff act of 1913, are claimed entitled to free entry under paragraph 613.

Opinion by FISCHER, G. A. The record not warranting a disturbance of the collector's action the protest was overruled.

**No. 40355.**—Protest 800702-51007 of Sears, Roebuck & Co. (Chicago).

ALUMINUM TABLE SPOONS.—The question here is whether aluminum table spoons were properly classified as hollow ware at 25 per cent ad valorem under paragraph 134, tariff act of 1913, or are dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by FISCHER, G. A. Aluminum table spoons were held dutiable as manufactures of metal under paragraph 167. G. A. 7662 (T. D. 35049) followed.

**No. 40356.**—Protests 782131, etc., of Austin, Baldwin & Co. et al. (New York and Philadelphia).

PAPER INITIALS, METAL COATED.—Initials die cut from metal-coated paper, classified at 35 per cent ad valorem under paragraph 324, tariff act of 1913, are claimed dutiable at 25 per cent under paragraph 332.

Opinion by FISCHER, G. A. On the authority of Abstract 37041 the paper initials in question were held properly classified under paragraph 324.

**No. 40357.**—Protests 764566, etc., of Joh. Meyer et al. (New York).

SILK UPHOLSTERY FABRICS.—The question here is whether certain velvet upholstery fabrics are composed in chief value of silk or cotton. They were

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classified as silk chief value at 50 per cent ad valorem under paragraph 314, tariff act of 1913, and are claimed dutiable as if in chief value of cotton at 40 per cent under paragraph 257.

Opinion by HOWELL, G. A. There was a conflict of testimony as to the component material of chief value in the upholstery fabrics in question. On the record the protests were overruled.

**No. 40358.**—Protests 92636f, etc., of W. B. Quaintance (New York).

ETAMINES.—Cotton fabrics invoiced as oriental stripes, classified as etamines at 60 per cent ad valorem under paragraph 339, tariff act of 1897, are claimed dutiable as cotton cloth under paragraphs 304 to 309.

Opinion by COOPER, G. A. On the authority of Quaintance *v.* United States (147 Fed., 753; T. D. 26999) the merchandise invoiced as oriental stripes was held dutiable as cotton cloth under paragraphs 304 to 309. G. A. 5691 (T. D. 25333) cited. Protests sustained in part.

**No. 40359.**—Protests 622475, etc., of Morimura Bros. (New York).

DRAWNWORK HANDKERCHIEFS.—Cotton handkerchiefs classified at 60 per cent ad valorem under paragraph 349, tariff act of 1909, are claimed dutiable as handkerchiefs with drawn threads under paragraph 322.

Opinion by COOPER, G. A. On the authority of Abstract 36830 the handkerchiefs ornamented with plain drawnwork were held dutiable under paragraph 322.

**No. 40360.**—Protest 765033 of Wm. H. Masson (Baltimore).

MADRAS MUSLIN.—Madras muslin classified as Jacquard figured upholstery goods at 35 per cent ad valorem under paragraph 258, tariff act of 1913, is claimed dutiable as Jacquard figured manufactures of cotton at 30 per cent under the same paragraph.

Opinion by COOPER, G. A. Madras muslin was held properly classified at 35 per cent under paragraph 258. United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 477; T. D. 36120) followed.

**No. 40361.**—Protest 769583 of Rice-Stix Dry Goods Co. (St. Louis).

COTTON TABLE DAMASK.—The question here is whether the merchandise is dutiable as cotton table damask at 30 per cent ad valorem under paragraph 258, tariff act of 1913, or at 25 per cent under paragraph 263.

Opinion by COOPER, G. A. Cotton table damask was held dutiable at 25 per cent under paragraph 263. G. A. 7780 (T. D. 35724) and G. A. 7630 (T. D. 34903) followed.

**No. 40362.**—Protest 788582 of Ely & Walker Dry Goods Co. (St. Louis).

FIGURED COTTON CLOTH.—Merchandise classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913, is claimed dutiable as figured cotton cloth.

Opinion by COOPER, G. A. On the authority of United States *v.* Sherman (6 Ct. Cust. Appls., 271; T. D. 35501), affirming G. A. 7618 (T. D. 34858), figured cotton cloth was held dutiable under paragraph 252.

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BEFORE BOARD 1, NOVEMBER 2, 1916.

**No. 40363.**—Protest 794863–58044 of Sears, Roebuck & Co. (Chicago).

TUSCAN RED—LAKES.

MCCLELLAND, *General Appraiser:* The merchandise which is the subject of this protest is invoiced as "Tuscan red No. 4076 D. X." It was assessed with duty at the rate of 20 per cent ad valorem under the provision in paragraph 63 of the tariff act of 1913 for lakes. It is claimed to be oxide of iron and

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subject to duty at 10 per cent under paragraph 55, or in the alternative at the same rate under paragraph 61 as pigments, 15 per cent under paragraph 63, or at 10 or 15 per cent under the catchall clause of paragraph 385 of said act.

We infer from the record that the name "Tuscan red" is simply either a proprietary name, or a name which designates a certain color or shade, and that there is nothing therefore in such name which would necessarily lead to its proper classification.

The official chemist at the port of Chicago testified to having analyzed a sample of the merchandise and to have found it "to contain about 10 per cent of coal-tar coloring matter, some inert diluent, and the balance iron oxide, with a little moisture, usual moisture inherent in colors."

In the Oxford Dictionary we find the following definition:

*Lake.*—A pigment obtained by the combination of animal, vegetable, or coal-tar coloring matter, with some metallic oxide of earth.

The detailed analysis above quoted would seem to fit into this definition, but the trend of the examination of the importers' witnesses and their testimony seems to indicate a purpose to establish a difference between a "lake" and a "color lake." We think the term "lakes" is sufficiently comprehensive to include all lakes, and this view seems to be confirmed in Farbwerke-Hoechst Co. *v.* United States (6 Ct. Cust. Appls., 483; T. D. 36121).

On the record presented the classification of the collector seems to have been fully warranted, and the protest is therefore overruled.

**No. 40364.**—Protests 778701, etc., of Sussfeld, Lorsch & Co. (New York).

POCKET COMPASSES—TALLY REGISTERS—PEDOMETERS.—Pocket compasses, small size unmounted compasses, tally registers, and pedometers classified at 50 or 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. Pocket compasses, unmounted compasses used to fit into field glass and watch cases, knife handles and gun stocks, tally registers, and pedometers were held dutiable at 20 per cent under paragraph 167, as claimed. G. A. 7824 (T. D. 35949), Sussfeld *v.* United States (5 Ct. Cust. Appls., 382; T. D. 34875), and United States *v.* Sussfeld (7 Ct. Cust. Appls., —; T. D. 36454) followed.

**No. 40365.**—Protest 803977 of Interocean Forwarding Co. (New York).

PHOTOGRAPHIC NEGATIVES.—Goods invoiced as developed photo-plate negatives, classified as manufactures of glass at 30 per cent ad valorem under paragraph 95, tariff act of 1913, are claimed dutiable as dry plates at 15 per cent under paragraph 380, or as nonenumerated manufactured articles under paragraph 385.

Opinion by SULLIVAN, G. A. It was found that the articles are negatives produced from dry plates. They were held properly classified under paragraph 95. G. A. 4420 (T. D. 21055) and G. A. 6661 (T. D. 28404) cited.

**No. 40366.**—Protest 789602–57653 of G. W. Sheldon & Co. (Chicago).

POCKET COMPASSES.—So-called pocket compasses, each composed of a brass case, having a ring by which it can be hung or attached to a chain, a glass face, and a steel needle, not adapted for use as a watch charm, were classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, and are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. On the authority of G. A. 7824 (T. D. 35949) and Abstracts 39510 and 39728, pocket compasses were held dutiable under paragraph 167.

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BEFORE BOARD 2, NOVEMBER 2, 1916.

**No. 40367.**—Protest 766225 of Fensterer & Ruhe (New York).

DRINKING GLASSES—EARTHENWARE.—Drinking glasses returned by the appraiser as composed of blown and molded glass and classified at 45 per cent ad valorem under paragraph 84, tariff act of 1913, are claimed dutiable as manufactures of glass at 30 per cent under paragraph 95. Casseroles, plates, and dishes composed of earthenware, colored and enameled, classified as enameled earthenware at 40 per cent under paragraph 79, are claimed dutiable as common earthenware, decorated, at 20 per cent under paragraph 78, or as earthenware not decorated or enameled, at 35 per cent under paragraph 79.

Opinion by FISCHER, G. A. On the authority of United States *v.* Fondeville (7 Ct. Cust. Appls., —; T. D. 36457) the drinking glasses were held dutiable under paragraph 95. Protest overruled as to the earthenware.

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BEFORE BOARD 3, NOVEMBER 2, 1916.

**No. 40368.**—Protest 741998 of J. W. Hampton, jr., & Co. (Philadelphia).

TEA CONTAINERS.—Certain containers of tea are claimed entitled to free entry under paragraph 627, tariff act of 1913.

Opinion by HAY, G. A. Wright *v.* United States (6 Ct. Cust. Appls., 528; T. D. 36147) followed as to tea containers.

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(T. D. 36789.)

*Certification of Invoices—Corunna, Spain.*

Invoices of merchandise from Corunna, Spain, accepted when certified by the consul of a friendly nation or by two merchants.

TREASURY DEPARTMENT, *November 7, 1916.*

*To collectors of customs and others concerned:*

The department is advised by the Secretary of State that the American consular agency at Corunna, Spain, has been closed temporarily, and that, pending the reopening of the agency, invoices of merchandise from that place may be accepted if certified pursuant to the provisions of section 2844 of the Revised Statutes. You will be governed accordingly.

(84615.) WM. P. MALBURN, *Assistant Secretary.*

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(T. D. 36790.)

*Drawback on dress shields, infants' specialties, etc.*

Drawback on dress shields, infants' specialties, diapers, and bibs manufactured by the Canfield Rubber Co., of Bridgeport Conn., with the use of imported galloon binding, Japanese silk, lace trimming, beading, frilled webbing, and tape and drawing strings.—T. D. 27813 revoked.

TREASURY DEPARTMENT, *November 8, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations

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(chapter 18 of the Customs Regulations of 1915) on dress shields, infants' specialties, diapers, and bibs manufactured by the Canfield Rubber Co., of Bridgeport, Conn., with the use of imported galloon binding, Japanese silk, lace trimming, beading, frilled webbing, and tape and drawing strings.

The allowance shall not exceed the quantities of imported materials appearing in the exported shields, specialties, diapers, and bibs, as shown by the manufacturers' sworn statement, dated September 29, 1916, which is transmitted herewith for filing in your office.

Supplemental sworn schedules covering additional articles may be filed, and upon verification thereof drawback may be allowed on the articles covered by such supplemental schedules.

T. D. 27813 is hereby revoked.

Respectfully, WM. P. MALBURN,
(43283.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36791.)

*Special permits for preliminary entries.*

Special permits (customs Cat. No. 3463) to be issued in cases where application is filed after arrival of vessel. Permits not to be issued for entire cargo or shipment, but only such part for which necessity for immediate delivery is shown to exist.—Articles 277 to 281, Customs Regulations of 1915, construed.

TREASURY DEPARTMENT, *November 11, 1916.*

SIR: The department is in receipt of your letter of the 27th ultimo, relative to the issuance of special permits for the immediate landing and delivery of automobiles, tropical fruits, and certain other articles under the provisions of articles 277 to 281 of the Customs Regulations of 1915.

The regulations referred to are based upon those contained in T. D. 24611, dated August 10, 1903, paragraph 2 of which is in substantially the same language as article 277 of the existing regulations. It appears that, under T. D. 24611, it was the uniform practice in cases in which immediate delivery was necessary in order to protect the importer and the Government from loss and the importer was unable to make a formal entry at the time the vessel was ready to unlade because of the absence of invoices, bills of lading, or other documents required by the regulations, to issue a permit on customs Cat. No. 3463, a sufficient amount being deposited to secure the Government and insure the filing of a formal entry as soon as is practicable.

The regulations contained in T. D. 24611 were not included in the Customs Regulations of 1908, but were in substance inserted in the regulations of 1915 as articles 277 to 281, inclusive. The question has

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arisen at your port whether the express provision for the issuance of a special permit "in advance of the arrival of the importing vessel" by implication prohibits the issuance of such permits after such vessel's arrival. The further question has arisen whether such special permits must include the entire shipment or whether they should be limited to that portion thereof for the immediate delivery of which a necessity exists.

The regulations contained in T. D. 24611 were not construed as prohibiting the issuance of special permits after the arrival of the importing vessel, nor was it the intention of the Customs Regulations of 1915 to so limit the issuance of such permits. Such a limitation would serve no purpose other than to cause many more applications to be made than otherwise would be the case, because the importer must anticipate the conditions which would exist after the vessel's arrival. The particular language on which emphasis is laid, "in advance of the arrival of the importing vessel," was probably used because at the time of the original issuance of such regulations it was the uniform rule that entries of merchandise could not be accepted nor delivery permits issued until after the arrival of the importing vessel within the limits of the port at which its cargo was intended to be unladen, and no special provision was considered necessary for the issuance of such permits after the vessel's arrival.

The department is therefore of the opinion that the regulation should not be so construed as to prohibit the issuance of such special permits merely because the application is filed after the vessel's arrival. It is further of the opinion that such permits should not include an entire cargo or shipment, but should be issued for only such part thereof for which the necessity for immediate delivery is shown to exist.

You will be governed accordingly.

Respectfully, ANDREW J. PETERS,
(102801.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36792.)

*Certification of invoices.*

**Invoices of merchandise shipped from La Paz, Bolivia, accepted when certified by a consul of a friendly nation or by two merchants.**

TREASURY DEPARTMENT, *November 11, 1916.*

SIR: The Secretary of State advises the department that there is no American consul at La Paz, Bolivia, and that La Paz has been placed on the "no consul" list.

Collectors of customs are therefore authorized to accept invoices of merchandise shipped from La Paz when certified by a consul of a

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friendly nation or by two merchants under the provisions of section 2844 of the Revised Statutes.

Respectfully, ANDREW J. PETERS,
(103975.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36793.)

*Manifests of small boats, etc.*

T. D. 36721 extended to include manifests of undocumented vessels, rafts, and other boats not required to enter under the navigation laws.

TREASURY DEPARTMENT, *November 11, 1916.*

SIR: The department refers to your letter of the 23d ultimo, in regard to duplicate manifests for small undocumented boats arriving from Canada.

The department held in T. D. 20814 that manifests of such boats were not required to be mailed to the Auditor for the Treasury Department under the provisions of section 9 of the act of March 2, 1895. The Auditor for the Treasury Department reports that the duplicate manifests serve no useful purpose in his office.

The provisions of T. D. 36721 are therefore extended to include undocumented vessels, rafts, and boats not required to enter under the navigation laws.

Respectfully, ANDREW J. PETERS,
(104030.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Portland, Me.*

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(T. D. 36794.)

*Model gowns.*

Regulations governing the importation and exportation of models of women's wearing apparel entered under subsection 4 of paragraph J of section 4 of the tariff act of 1913.—T. D. 34273 revoked and T. D. 33806 modified.

TREASURY DEPARTMENT, *November 10, 1916.*

*To collectors and other officers of the customs:*

Subsection 4 of paragraph J of section 4 of the tariff act of October 3, 1913, provides in part for the free entry, under bond conditioned for their exportation within six months from date of importation, of "models of women's wearing apparel imported by manufacturers for use as models in their own establishments" under such regulations and subject to such conditions as the Secretary of the Treasury may prescribe. This provision of law also provides that no article shall be entitled to entry thereunder that is intended for sale or which is imported for sale on approval.

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Models of women's wearing apparel hereafter imported by manufacturers for use as models in their own establishments shall be subject to the following regulations and conditions:

(1) Articles intended for sale or for sale on approval shall not be admitted as models under said paragraph. Models admitted under this paragraph may be used by the importer solely as models in his own manufacturing establishment and shall not be removed therefrom for reproducing, copying, painting, sketching, or for any other use by others, nor be used in his own establishment for such purposes except by the manufacturer or his employees. The use of such articles contrary to these regulations will subject the same to the payment of duty assessed thereon.

(2) Models admitted under said paragraph will be entered on form Cat. No. 7539, "Entry under 6 months' bond," and there shall be filed on entry a certificate, signed by the shipper or his agent, stating that the articles are models of women's wearing apparel and that the same are not to be imported for sale or for sale on approval. Invoices covering such models shall state the character of the material from which made and the quantity and kind of each fabric, lace, embroidery, trimming, and lining contained therein, and the total value of each completed garment or article.

(3) The importer shall file, on enrtry, an affidavit stating, in addition to his name and business address, that he is a manufacturer of women's wearing apparel; that the articles are imported solely as models for use in his own establishment and will be so used; that they are not imported for sale or for sale on approval; and that the same will not be removed from such establishment for reproducing, copying, painting, or sketching by others, nor used in his establishment for such purposes except by himself or his employees. The offering or displaying of such articles for sale within a short time after their importation will be taken as presumptive evidence that the same were intended for sale at the time of importation, and duties thereon will be collected, even though the same may not be sold and are subsequently exported.

(4) The bond required on entry of such articles will be in the following form:

Cat. No. 3369. Bond No. ——.

*Bond for models of women's wearing apparel.*

Know all men by these presents, that ———, of ———, as principal, and ———, of ———, and ———, of ———, as sureties, are held and firmly bound unto the United States of America in the sum of ——— dollars, for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals this —— day of ———, 19—.

Whereas the above-bounden principal imported at the port of ——— on the —— day of ———, per steamship ———, and entered under the provisions



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of subsection 4 of paragraph J of section 4 of the tariff act of October 3, 1913, certain models of woman's wearing apparel described as follows: ———.

Now, therefore, the conditions of this obligation are such that if the said articles shall be used and employed solely in the manner authorized by law and the regulations promulgated thereunder by the Secretary of the Treasury, and shall be actually exported within six months after the date of their importation and shall not or any part thereof be relanded at any port or place within the limits of the United States, and if the certificates and other proofs required by law and the customs regulations showing the exportation or the delivery of the same at a foreign port or place shall be produced and deposited with the collector of customs at the said port of importation within one year from the date thereof, or, in default thereof, if the obligors shall pay the duties which may be assessed upon the said articles, then this obligation shall be void; otherwise it shall remain in full force and effect.

——— ———. [SEAL.]
——— ———. [SEAL.]
——— ———. [SEAL.]

Signed, sealed, and delivered in the presence of:

——— ———.
——— ———.

(5) The penalty of the bond shall be in a sum equal to double the estimated duties, and the bonds given hereunder can not be extended.

(6) Models of women's wearing apparel shall be marked for identification by means of a cord and lead or tin seal, the cord to be run through the article and all trimming thereon, where necessary, in such manner as to prevent the removal of the cord and seal without destroying the article. A tag should be attached to the cord, upon which will be stated the name of the port at which the article was imported, the entry number, name of importer, and the number of the bond. The seals and tags will be affixed at the expense of the importer.

Such articles will be exported and the bonds canceled in accordance with paragraphs 10 and 11 of T. D. 33806, except that bonds may be canceled upon the production of certificates of inspection and lading at frontier ports.

T. D. 34273 and all provisions of T. D. 33806 applying to models of women's wearing apparel, except paragraphs 10 and 11, are hereby revoked.

(100584.) ANDREW J. PETERS, *Assistant Secretary.*

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## (T. D. 36795.)

### *Drawback on alcohol.*

T. D. 36741 of October 23, 1916, extended to cover alcohol manufactured by the Republic Distilling Co., of New York, N. Y., at its distillery at Curtis Bay, Md., with the use solely of imported molasses.

TREASURY DEPARTMENT, *November 13, 1916.*

SIR: The department's regulations, dated October 23, 1916 (T. D. 36741), providing for the payment of drawback on alcohol manu-

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factured by the Columbus Distilling Co., of New York, N. Y., with the use solely of imported molasses, are hereby extended to cover alcohol manufactured by the Republic Distilling Co., of New York, N. Y., at the distillery of the company at Curtis Bay, Md., with the use solely of imported molasses.

Copies of the report of the special agent and the sworn statement of the Republic Distilling Co., dated October 4, 1916, are transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(105410.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36796.)

*Drawback on alcohol.*

T. D. 36741 of October 23, 1916, extended to cover alcohol manufactured by the American Alcohol Co. (Inc.), of New York, N. Y., at its Westwego distillery, New Orleans, La.

TREASURY DEPARTMENT, *November 13, 1916.*

SIR: The department's regulations, dated October 23, 1916 (T. D. 36741), providing for the payment of drawback on alcohol manufactured by the Columbus Distilling Co., of New York, N. Y., with the use solely of imported molasses, are hereby extended to cover alcohol manufactured by the American Alcohol Co. (Inc.), of New York, N. Y., at the Westwego distillery of said company at New Orleans, La., with the use solely of imported molasses.

Copies of the report of the special agent and the sworn statement of the American Alcohol Co. (Inc.), dated October 20, 1916, are inclosed herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(105263.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36797.)

*Drawback on hair-press cloth.*

Drawback allowed on hair-press cloth manufactured by the Oriental Textile Mills, of Houston, Tex., with the use of imported dutiable hair, and horsehair and goat hair, which are free of duty.

TREASURY DEPARTMENT, *November 13, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on hair-press cloth

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manufactured by the Oriental Textile Mills, of Houston, Tex., with the use of imported dutiable human-hair stumps and goat hair and horse manes which are free of duty.

A manufacturing record shall be kept by the company in accordance with the sworn statement, dated October 20, 1916, which is transmitted herewith for filing in your office, which will show, in addition to the usual import data, the quantities of the different kinds of hair used, including the weights of the cleaned horse manes and goat hair, and the gross weight of the human hair and the quantity of the hair-press cloth produced. A sworn abstract from the manufacturing record shall be filed with the drawback entry.

Drawback may be allowed under these regulations on hair-press cloth exported on and after September 19, 1916.

Respectfully, ANDREW J. PETERS,
(45907.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Galveston, Tex.*

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(T. D. 36798—G. A. 7985.)

*Multifarious protests.*

1. A protest which merely refers to a section of the tariff act of 1909, under which the merchandise was classified, without describing it, and without alleging wherein it is not within the provision of such paragraph, does not distinctly and specifically call the attention of the collector to the error committed.

2. The designation in a protest of numerous paragraphs under which it is claimed the merchandise should be classified, without stating the nature of the merchandise either *eo nomine* or otherwise, but simply alleging the "articles assessed" under the paragraph, does not raise an issue.

3. A protest should in clear terms designate (*a*) the nature and character of the merchandise, (*b*) why it should be dutiable under the paragraph claimed, and (*c*) designate such paragraph and the rate. It does not call for nicety of description or technical terms, but, if stated in the language of the statute itself, "distinctly and specifically," pointing out the error committed by the collector and the reasons why the merchandise is not dutiable as assessed by him, raises an issue and is sufficient to give the Board of General Appraisers jurisdiction to hear the cause on its merits.

4. A protest which states that objection is made against the decision of the collector assessing duty at 85 per cent ad valorem or other rate or rates on articles assessed under paragraph 448 of the tariff act of 1909, and does not call the attention of the collector to the merchandise, its nature and character, but states as a reason for such objection that the merchandise is dutiable under 23 separate and distinct paragraphs, some having reference to different classes of the same merchandise at different rates and other paragraphs having reference to merchandise totally distinct and different from that enumerated in paragraph 448, without assigning any reason why the merchandise is assessable under the paragraphs enumerated and without describing the merchandise either *eo nomine* or otherwise, is not setting forth

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therein "distinctly and specifically" the grounds of objection to the collector's assessment. Such protest does not create an issue and is void for multifariousness and indefiniteness.

## United States General Appraisers, New York, November 6, 1916.

**In the matter of protests 642235, etc., of Knauth, Nachod & Kuhne against the assessment of duty by the collector of customs at the port of New York.**

[Dismissed.]

*Walden & Webster* (*Edward F. Jordan* of counsel) for the importers.

*Bert Hanson*, Assistant Attorney General (*John R. Rafter*, special attorney), for the United States.

Before Board 1 (McCLELLAND, SULLIVAN, and BROWN, General Appraisers; BROWN, G. A., absent).

SULLIVAN, *General Appraiser:* These protests were submitted on stipulation as to the facts. The stipulation is as follows:

It is hereby stipulated and agreed by and between counsel that the merchandise covered by the protests herein and enumerated in the annexed Schedule A is of the same character as that passed upon by the United States Court of Customs Appeals in United States *v.* American Express Co. (T. D. 35341), United States *v.* Altman (T. D. 35390), Guthman *v.* United States (3 Ct. Cust. Appls., 286), Cohn & Rosenberger *v.* United States (3 Ct. Cust. Appls., 288), and Cohn & Rosenberger *v.* United States (4 Ct. Cust. Appls., 378); and that the merchandise covered by the protests herein and enumerated in the annexed Schedule C is of the same character as that passed upon by the Board of United States General Appraisers in T. D. 31089.

It is further stipulated and agreed that the records in the above-cited cases may be, and the same hereby are, incorporated in the records in these protests, and the protests are submitted on the above stipulation and the records in these protests.

SCHEDULE A.

| | Invoice description. |
|---|---|
| Protest Nos. 642235/16748 | Locket w/ chain |
| | Necklet |
| | Necklets |
| | Pin |
| | Brooch |
| | Brooches |
| | Bracelet |
| | Fancy silver chains |
| | Fancy silver chain |
| | Bar pin |
| | Bar pins |
| | Steel chains |
| | Sterling silver chain |
| | Sterling silver brooch |
| | Sterling silver bar pin |
| Protest Nos. 667392/37084 | Pins |
| | Locket |
| | Necklace |
| Protest Nos. 685897/51709 | Necklaces |
| | Hairpin |
| | Necklace |

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SCHEDULE C.

Protest Nos. 642235/16748..... Vanity case

Protest 642235 is as follows:

NEW YORK, *April 1, 1912.*

COLLECTOR OF CUSTOMS.

SIR: Protest is hereby made against your decision assessing duty at 85 per cent ad valorem or other rate or rates on articles assessed under paragraph 448 and other merchandise covered by entry below named. The reasons for objection, under the tariff act of August 5, 1909, are that said merchandise is dutiable at 45 per cent ad valorem under paragraphs 109 or 199, or at 35 per cent or 60 per cent ad valorem under paragraph 421, or at 60 per cent under paragraphs 402, 448, or 475, or at 1 cent per pound in addition to the duty on the wire from which made under the second proviso in paragraph 135, or at 10 per cent or 20 per cent under paragraph 449, or 35 per cent under paragraphs 188 or 431. So much thereof as was assessed at more than 15 cents per pound and 60 per cent ad valorem is dutiable at said rate under paragraph 179. Such of the merchandise as is material for manufacture is dutiable at 3 cents per dozen pieces and one-half of 1 cent per gross for each 1 cent the value exceeds 72 cents per gross, plus 25 per cent ad valorem under paragraph 448.

If not so, then such of the merchandise as was assessed at more than the appropriate rate under the following paragraphs of section 1 is dutiable thereunder as follows, viz, 25 per cent, paragraph 462; 35 per cent, paragraphs 95, 215, 420, 463, or 464; 40 per cent, paragraph 452; 45 per cent, paragraphs 95, 109, 199, 332, 358; 50 per cent, paragraph 403. If said merchandise is not dutiable directly under any of the paragraphs or sections above mentioned, then it is dutiable thereunder by assimilation or material of chief value under and by reason of the provisions of paragraph 481, or if not dutiable as above, then at 10 or 20 per cent ad valorem under paragraph 480.

| Entry number. | Vessel. | Entered. | Bond number. | Liquidated. | Marks and numbers. |
|---|---|---|---|---|---|
| 325185..... | Oceanic..... | Dec. 18, 1911 | ..... | Mar. 19, 1912 | All and various, as per entries and invoices. |

KNAUTH, NACHOD & KUHNE,
By WALDEN & WEBSTER,
*Attoneys, 29 Broadway, New York City.*

The remaining protests are the same, with the exception that they contain in addition "50 per cent ad valorem under paragraph 427, or at," after the claim "45 per cent ad valorem under paragraph 109 or 199," and the dates, entry numbers, vessel, etc., are, of course, different.

At the hearing the Government counsel objected to these protests as being multifarious, his objection being as follows:

There is a complaint against the action of the collector for assessing duty at the rate of 85 or other rate or rates on various items on these invoices. It is claimed that these goods so assessed at the various rates mentioned or not mentioned, are dutiable under several different paragraphs at 14 different rates. From a reading of the protest it is impossible to determine which mer-

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chandise is referred to as being dutiable at any given rate. I cite as authority for the proposition that this protest is insufficient the case of Lichtenstein *v.* United States (T. D. 41105), where practically the same situation is involved.

Then occurred the following colloquy between the board and counsel:

General Appraiser McClelland. The motion to dismiss on the ground of multifariousness will be left undecided until the case is taken up on its merits.

Mr. Rafter. If the stipulation as to the facts is signed by the Government it will be with the reservation as to the objection made.

General Appraiser McClelland. Oh, of course; yes. The stipulation, in other words, is not to be considered unless the protest is held to be good. The court has recently held that objection to the protest on the ground that it is not specific, as required by the statute, or that it is multifarious must be made before the board.

At the very threshold we are met with the serious question, Do the protests come within the provisions of the statute providing—

That the decision of the collector as to the rate and amount of duties chargeable upon imported merchandise, including all dutiable costs and charges, and as to all fees and exactions of whatever character (except duties on tonnage), shall be final and conclusive * * * unless the owner, importer, consignee, or agent of such merchandise * * * shall, within 15 days after but not before such ascertainment and liquidation of duties, * * * if dissatisfied with such decision, give notice in writing to the collector, setting forth therein *distinctly and specifically*, and in respect to each entry or payment, the reasons for his objections thereto, * * *. [Italics ours.]

(subsec. 14, sec. 28, of the tariff act of 1909) or not?

The board at all times hesitates to dismiss protests on the ground of insufficiency, multifariousness, or failure to distinctly and specifically state the reasons why the protestants believe the action of the collector erroneous. The board has gone a long way in holding protests sufficient, in order that everyone may have his day in court; but there is a limitation this board can not overlook, and that is, a protest must come within the provisions of the statute.

The facts in the case at bar are stipulated, and control our action with reference to the merchandise in dispute.

The basis of invoking the jurisdiction of the board to pass upon errors committed by the collector depends entirely upon the allegations and statements of the protests. No matter how clearly merchandise may be expressed on the invoice, or by the collector in his return, if the protestant fails to enunciate clearly and specifically his objections to such return and the grounds therefor, this board is without jurisdiction to hear the case.

A protest sustains some relationship to a pleading in an ordinary action at law. Technical precision is not required; legal formalities are abandoned. All the protestant need do is to come within the provisions of the statute. If he clearly enumerates his objections so that a casual reading of the protest will disclose to the ordinary

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mind the general nature of the merchandise, the rate and paragraph, and the grounds why the classification of the collector is wrong, the protest is within the provisions of the statute.

Apply the above rules to the protest under consideration. It is stated the objections are against the decision of the collector assessing duty at 85 per cent ad valorem, "or other rate or rates, on articles assessed under paragraph 448" of the tariff act of 1909. Paragraph 448 enumerates almost all classes of millinery, military, and jewelry articles. It begins with "chains, pins, collar, cuff, and dress buttons, combs, millinery, and military ornaments," composed of silver, German silver, brass, or gun metal, etc., or set with imitation precious stones, etc. It also covers stampings of all kinds composed of metal suitable for use in the manufacture of these articles, except chain worth less than 30 cents per yard, other than nickel or nickel-plated chain. It also covers various patterns of chain; bags and purses made of silver, German silver, or white metal mesh, valued at more than $2 per dozen; and, finally, "all articles commonly or commercially known as jewelry," and "chain, mesh, and mesh bags and purses, composed of gold or platinum." The protests under consideration in their reference to "articles assessed under paragraph 448," without designating the class of articles, do not distinctly and specifically set forth the grounds or reasons for the protestants' objection to the collector's classification. It is not the merchandise as described in the stipulation that gives the board jurisdiction; it is the allegations of the protests, and they do not even describe the merchandise, although the collector evidently did describe it in his return.

A more serious objection to the protests, in our opinion, is the reference to the rate and paragraph claimed without in any way stating the class of merchandise covered by that rate and paragraph. For instance, the first claim is that "articles assessed under paragraph 448" are "dutiable at 45 per cent ad valorem under paragraph 109 or 199." Paragraph 109 has reference to stained or painted glass windows, mirrors, and manufactures of glass or paste. Certainly, if the stipulation is to be considered at all this paragraph would not be applicable. Paragraph 199 covers manufactures of metal not specially provided for. The protests do not mention wherein the merchandise referred to in the stipulation could possibly come within either of those paragraphs, and the mere statement of these claims does not point out to the collector a single fact showing an alleged error in his classification.

There is no reference to a single article of merchandise referred to in the schedule attached to the stipulation in any of the protests. It merely enumerates paragraph and rate, and there is nothing to show wherein or how the paragraphs or rates mentioned are applicable to the merchandise enumerated in the schedule, which, as before stated,

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are merely stated in the protests as "articles assessed under paragraph 448."

Are not such protests bad, and do they entitle the protestants to relief?

The protestants' relief must be based on the protest they file. The objection must have been in protestants' mind at the time of filing protest. The courts and this board have held a protestant can not add to his protest. Possibly it would be a wise provision to permit addition or to permit a protest to be made more specific upon motion; but as this can not be done, and the Government challenges the instruments for want of specificness, then the protestant must stand or fall upon the facts as stated in his written declaration.

In the brief filed by protestants alleging that the protest is sufficient they cite the Carter and Lichtenstein cases.

The Carter case (reported in 1 Ct. Cust. Appls., 64; T. D. 31033) was upon this state of facts:

The merchandise was classified as etamines, which were covered *eo nomine* by section 339 of the tariff act of 1897. The protest claimed that the merchandise was dutiable at the appropriate rate according to count of threads, weight, value, and condition as cotton cloth under paragraphs 304 to 310, inclusive, or at the same rate and the additional rate according to value under paragraph 313, or at 45 per cent under paragraph 322 or 347, etc. The board held the protest insufficient on the ground that it did not mention a rate, merely claiming the merchandise to be dutiable "at the appropriate rate according to count of threads, weight, value, and condition as cotton cloth under paragraphs 304 to 310, inclusive," and under paragraph 313.

The real contention in the case was with reference to the count of threads, and while the rate was omitted, the protest did bring to the attention of the collector the objection in the mind of the protestant, and was sufficient to cause the collector, if wrong, to correct his error, because in the section as to the count of threads was the rate applicable to such merchandise.

The court therefore reversed the board, holding that technical nicety is not to be insisted upon, and that where the importer protests against the rate assessed and at the same time points out the provisions under which he claims the article dutiable with sufficient clearness, so that the collector may by mere computation or examination of the goods determine the classification, he has substantially complied with the statute.

That is the strongest authority to be had tending to sustain the protests.

On the other hand, there are numerous authorities wherein the court and board have held protests quite similar to those in the case at bar as not being within the provisions of the statute.

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In Bliven *v.* United States (1 Ct. Cust. Appls., 205; T. D. 31239) the issuable portion of the protest stated that it was made against the collector's decision assessing duty at the rate of 1.426 cents per pound, or other rate or rates on certain paraffin liquid (vaseline oil) covered by several entries mentioned. The grounds of objection under the tariff act of 1897 were that the merchandise was free of duty under paragraph 633, or, if not, then at 0.2852 cents per pound, as it was made in Germany from Russian petroleum, etc. The collector in his return stated that an inspection of the invoice and entry showed that the merchandise was imported from Germany, and was returned by the appraiser as "paraffin oil" (vaseline oil), etc.

The protest was overruled on the ground that it was insufficient, and in sustaining the board the court said:

> It has been uniformly held by the courts that where a genus and species were both named in the tariff act it will not suffice in the protest to rely upon that relationship and allege a rate applicable to merchandise therein other than of the name intended to be counted upon for judgment. That in tariff legislation the genus and species are regarded as separate and distinct legislative subjects and must be so regarded in the administration and construction of tariff laws is well settled * * *.

The court further stated:

> The cardinal principle underlying the sufficiency of protests being that the protestant *must direct the mind of the collector to the appropriate provision of law.* It can not by any stretch of imagination be said that this requirement is satisfied when the protestant directs the mind of the collector to some other provision of law assessing a different rate of duty. Such is a more violent contravention of the requirement, because it not only does not leave the mind of the collector free to determine for himself the appropriate provision, but carries his mind away from the applicable clause tc an inapplicable one and thus confuses the situation.

*In re* protest of B. Altman & Co., 597754, G. A. 7831 (T. D. 36003), the merchandise consisted of dress buttons, brooches, hatpins, lavallieres composed of silver, gun metal, or brass plated, in some instances set with imitation precious stones, all dutiable under paragraph 448, and so assessed by the collector at 85 per cent ad valorem.

The protest alleged as error on the part of the collector the assessment of duty at 85 per cent ad valorem on vanity cases, powder boxes, coin purses, or other articles of utility.

At the trial a stipulation was entered into, the Assistant Attorney General reserving all objections to the sufficiency of the protest, that the merchandise invoiced as brooches, lavallieres, hatpins, lockets, and buckles, as well as the merchandise in excess returned as plated jewelry, were of the same dutiable character as those the subject of the case of Cohn & Rosenberger *v.* United States (4 Ct. Cust. Appls., 378; T. D. 33536) and Altman *v.* United States (6 Ct. Cust. Appls., 131; T. D. 35390).

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The stipulation did not refer to any of the merchandise mentioned *per se* in the protest. The same is true in the case at bar. The Government insisted the protest did not warrant action on the part of the board, except as to merchandise set forth therein, to wit, vanity cases, powder boxes, coin purses, or other articles of utility assessed under paragraph 448.

It will be noticed that the stipulation referred to many articles of merchandise not vanity cases, powder boxes, coin purses, or other articles of utility.

The board unanimously held that the protest could not be enlarged by stipulation, and that the cause could be heard only as to the class of merchandise enumerated in the protest. Numerous cases were cited as sustaining that contention.

That case illustrates the necessity of enumerating in the protest the class of merchandise under consideration. As to such a paragraph as 448 it is not sufficient to say in a protest "articles assessed under paragraph 448," for such allegation would not call the attention of the collector to any specific merchandise.

In the Lichtenstein case, *supra* (1 Ct. Cust. Appls., 79; T. D. 31105), the Court of Customs Appeals, almost at its inception, enunciated clearly what a protest should contain. In that case the protest was in blanket form. In the present case it is in blanket form, except the portion italicized; that being written on the typewriter.

The ultimate conclusion of the court is expressed as follows:

> This protest is misleading rather than informing. This obscurity results from a pernicious method of attempting to throw upon the collector and the courts the burden which properly rests upon the protestant of fairly apprising the collector and the court of *real* claims as distinguished from possible claims, which might be appropriately made with reference to goods not involved in the importation in question.

In the matter of protests 589123, etc., of Massce & Co., G. A. 7849 (T. D. 36117), the merchandise was invoiced as "blue-green oxide." It was assessed with duty at 30 per cent ad valorem under paragraph 56 of the tariff act of 1909, the appraiser returning it as "chromium, aluminum, cobalt, iron oxides, and silica," and the protest claiming it dutiable under paragraph 110 at only 25 per cent ad valorem, or paragraph 52 at only 4⅞ cents per pound or at only 10 cents per pound, or paragraph 46 at only 4⅜ cents per pound, or paragraph 50 at only 3 cents per pound, or paragraph 55 at only 1 cent per pound, or under numerous other paragraphs and rates. The board unanimously held that such protest was insufficient to call to the attention of the collector the objection to his decision within the mind of the protestant, and therefore was wholly insufficient to obtain the relief demanded.

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We will now notice some of the cases cited in the Carter case, *supra*, relied upon by the protestant.

Converse *v.* Burgess *et al.* (18 How., 413) was an action against the collector for wrongful classification of merchandise under the tariff act of 1846. The merchant appraisers passing thereon as provided for in that act, had held the protest sufficient, and this judgment was affirmed by the Supreme Court of the United States by a divided court; but the question at issue was not that the protest did not specifically call to the attention of the collector the error complained of, but "that the goods were not fairly and faithfully examined by the appraisers." On that state of facts a majority of the court held that the protest was sufficient. Certainly that case should not be cited as holding that a protest failing to name the merchandise, or properly classify it, should be held sufficient under the act of 1909, and even in that case Chief Justice Taney, with Justices Daniel and Nelson, dissented for the reasons that the grounds of objection were not distinctly and specifically set forth in the protest, within the meaning of the act of Congress, and that the protest did not apprise the collector of the particular objection taken at the trial.

That cause does not sustain the contention of the protestants.

In Arthur, collector, *v.* Morgan (112 U. S., 495) it was held that under section 2505 of the Revised Statutes (p. 487, 2d ed.), which provided for exemption from duty of "personal and household effects, not merchandise, of citizens of the United States dying abroad," included a carriage used abroad by its owner, and that the protest claiming that the carriage was personal effects in actual use, and as such free, but not claiming it to be household effects, was sufficient. With that authority we are not in dispute.

The strongest case that we can find sustaining the position of the protestant is United States *v.* Salambier (170 U. S., 621). The merchandise in that case consisted of sweetened chocolate in the form of small cakes or tablets manufactured from cocoa sweetened with sugar, known commercially as sweetened chocolate, classified by the collector as confectionery, and assessed with duty at 50 per cent ad valorem under paragraph 239 of the tariff act of 1890. The protest challenged this classification, and claimed that the goods were dutiable at 2 cents per pound, but did not point out the paragraph under which claim was made. Two paragraphs of that act, 318 and 319, imposed a duty of 2 cents, the first for chocolate and the second for cocoa. The board held that the merchandise was dutiable at 2 cents per pound under paragraph 319, and that the failure of the importer to specifically claim under that paragraph did not vitiate the protest. This was affirmed by the Circuit Court and the Supreme Court.

In that case it was shown beyond question that the collector could have no doubt whatever that the protest was against his classification

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under paragraph 239 of the act at 50 per cent ad valorem, and, the importer claiming the merchandise dutiable at 2 cents per pound, it was held good, as it distinctly called the grounds of objection to the mind of the collector, and the failure to name the paragraph was not a serious fault, it being distinctly shown that the paragraph under which the merchandise was classified was wrong.

With that authority we are in accord.

To our minds the case of Davies *v.* Arthur (96 U. S., 148) is as clear an exposition of what a protest should contain as is found in all the authorities, and we quote from it quite liberally.

In that case the merchandise was known as "Ducape Eglinton ties," which were manufactures of silk and used and known as neckties. The appraiser reported to the collector that he had returned the ties as silk scarfs and the twill silk as silk in pieces. The collector imposed a duty at 60 per cent ad valorem upon each item. The importer protested against the assessment upon the ground that the merchandise should only pay duty, being articles worn by men, women, or children, etc., and wearing apparel, under section 22, act of March 2, 1861, and section 13, act of July 14, 1862, at 35 per cent ad valorem, stating: "They are neither scarfs nor ready-made clothing in fact, nor as known in the trade and commerce."

Here was a clear declaration on the part of the collector, and it would seem a fairly clear declaration on the part of the protestant.

Mr. Justice Clifford, delivering the opinion of the court, stated:

> Persons importing merchandise are required to make their protests distinct and specific in order to apprise the collector of the nature of the objection before it is too late to remove it or to modify the exaction, and that the proper officers of the Treasury may know what they have to meet in case they decide to exact the duties as estimated, notwithstanding the objection, and to expose the United States to the risk of litigation.

After stating the amount paid as duties, and further reference to the statute and the mode of procedure under these acts, the court stated:

> Unless the protest is made in writing and is signed by the claimant within 10 days after the ascertainment and liquidation of the duties, setting forth distinctly and specifically the grounds of objection to the payment, no action of the kind against the collector can be maintained to recover back the duties as having been illegally exacted. Nor is it sufficient to object to the payment of any particular duty or amount of duty, and to protest in writing against it; but the claimant must do more, as is evident from the words of the act of Congress. He must set forth in his protest the grounds upon which he objects, distinctly and specifically, the reason being, as ruled by Chief Justice Taney, that the words of the act requiring the protest are too emphatic to be overlooked in the construction of the provision. Mason *v.* Kane (Taney's Dec., 177).
>
> Mistakes and oversights will sometimes lead to irregular assessment, and the object of the requirement is to prevent a party, if he suffers the mistake or oversight to pass without notice, from taking advantage of it when it is too

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late to make the correction, and to compel him to disclose the grounds of his objection at the time when he makes his protest.

Protests of the kind must contain a distinct and clear specification of each substantive ground of objection to the payment of the duties. Technical precision is not required; but the objections must be so distinct and specific as, when fairly construed, to show that the objection taken at the trial was at the time in the mind of the importer, and that it was sufficient to notify the collector of its true nature and character, to the end that he might ascertain the precise facts and have an opportunity to correct the mistake and cure the defect, if it was one which could be obviated. Burgess *v.* Converse (2 Curt.. 223).

Two objects, says Judge Curtis, were intended to be accomplished by the provision in the act of Congress requiring such a protest: (1) To apprise the collector of the objections entertained by the importer before it should be too late to remove them if capable of being removed. (2) To hold the importer to the objections which he then contemplated, and on which he really acted. and prevent him, or others in his behalf, from seeking out defects in the proceedings, after the business should be closed, by the payment of the money into the Treasury.

This to our minds is as clear and distinct an enunciation as to what a protest should contain as is possible to be had. In clear and unequivocal language the court distinctly points out that the protest need not be framed with extreme nicety, but it must fairly state the objection with sufficient clearness to apprise the collector, from the paper itself, as to the reasons why his classification was wrong.

Now, apply these facts to the case at bar:

We have a stipulation which says—

* * * The merchandise covered by the protests herein and enumerated in the annexed Schedule A is of the same character as that passed upon by the United States Court of Customs Appeals in United States *v.* American Express Co., * * *—

and numerous other cases. These are the facts upon which this case is to be decided. Now, apply this stipulation to the merchandise described in the protest, and we are left to presume that it is similar to that stated in the stipulation without any facts. In the cases cited in the stipulation one of the essential elements of the merchandise was that it was commonly and commercially known as jewelry. In the protests in the case at bar it is not alleged that the merchandise is commonly and commercially known as jewelry. Even though it came within the similarity referred to in the stipulation the protests do not claim that it was commonly and commercially known as jewelry.

The cases referred to in the stipulation cover merchandise not within contemplation of that referred to in the protests. The protests merely say "articles assessed under paragraph 448" are more properly dutiable under the paragraphs named. For aught we know that term may or may not embrace jewelry; it may be commonly or commercially known as jewelry; it may be suitable for manu-

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facture, or it may not. None of these grounds are alleged or stated in the protests.

While we hesitate at any time to dismiss a protest for multifariousness, or for not being sufficiently specific, yet in the case at bar our duty is clear and plain.

What is the meaning of the phrase in the stipulation—"of the same character as that passed upon by the court" in the cases mentioned? Does it mean merchandise commonly and commercially known as jewelry? Does it mean jet pendants? It appears from all the authorities and the constructions placed upon tariff acts that two articles of the same description may not be of the same character and may possess different elements and qualities. Cameos and diamonds illustrate our ideas on this proposition. It but renews what has been so frequently stated, that a fact can not be stipulated, and the real contention left in doubt, namely, what is actually the merchandise.

It is unnecessary for us to enter into the facts of this case at all. The protests are dismissed.

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(T. D. 36799—G. A. 7986.)

*Foxtail chain in lengths—Manufactures of metal.*

(1) Where the use to which an article may be applied is made a prominent factor in its classification, and it is classifiable under two or more paragraphs of the tariff act of 1913, the same is dutiable under that paragraph which provides for its predominant use.

(2) An article of foxtail chain made of brass or German silver imported in lengths of from 25 to 100 meters, the testimony showing the general use of the article in eyeglass holders and gas and electric light fixtures largely predominates over its use for any other purpose, is not within the provision of paragraph 356 of the act of 1913 covering materials of metal suitable for use in the manufacture of the articles mentioned therein, but is dutiable as a manufacture of metal not specially provided for at 20 per cent ad valorem under the provisions of paragraph 167.

United States General Appraisers, New York, November 10, 1916.

In the matter of protests 793474, etc., of Albert Lorsch & Co. against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

*Comstock & Washburn* (*Albert H. Washburn* and *Henry J. Rode* of counsel) for the importers.

*Bert Hanson*, Assistant Attorney General (*Charles D. Lawrence* special attorney), for the United States.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers; Brown, G. A., dissenting).

Sullivan, *General Appraiser:* The merchandise under consideration consists of chain in lengths of 25 to 100 meters, composed of

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metal, and valued at less than 30 cents per yard. The testimony discloses that as imported the shortest lengths are at least 25 to 50 meters, and that it is very seldom imported in such lengths. Many samples were introduced in evidence—illustrative Exhibit A, a card containing several short lengths of various sizes of foxtail chain, being representative of some of the merchandise; items 0½ and 1½ being representative of the first item on the invoice covered by entry No. 75522, protest 793474, described as 3,700 meters German-silver foxtail chain, and the first item on the invoice in protest 799455, entry 71599, case 3548, 3,100 meters German-silver foxtail chain. These items, it was testified, came in lengths of about 100 meters, wound on a reel, coil, spool, or hank, and sometimes in bunches. These two items are less than one-sixteenth of an inch in diameter, and are composed of German silver. Exhibit 1 consists of several bunches of copper-colored chain fastened together by wire. It is over one-sixteenth of an inch in diameter and represents items invoiced as 3,200 meters brass foxtail chains, 6, 5, 4, and 3, in protest 800077, entry 94509. It is represented on the card (illustrative Exhibit A) by the numbers mentioned. It was testified it was imported in the condition represented by Exhibit 1. Items of round chain on invoice connected with entry 60093, protest 800077, are represented by samples contained in envelope marked "sample snake chain," received in evidence as illustrative Exhibit B.

It is testified on behalf of the importers that the small chain is used in eyeglass holders, and the large chain in electric light and gas fixtures. A sample of an eyeglass holder, in which a chain like 1½ and 0½ on illustrative Exhibit A is used, was received in evidence as illustrative Exhibit C. Illustrative Exhibit D represents a portion of a gaslight valve containing a chain similar to Exhibit 1. Importers' witness further testified that the uses enumerated, viz, for eyeglass holders and gas or electric light fixtures, constitute the principal or chief use of these chains; that they are never set with imitation precious stones; that the chains are in the same condition as imported, being in the same condition as when they left the machine; and that they are unfinished, worth less than 30 cents a yard, and generally made of brass or German silver.

It is testified by Mr. Conroy, of the corporation of General Gaslight Co., that his company uses approximately 100,000 meters a year of this foxtail chain of the sizes of 4 and 5 on illustrative Exhibit A for use in the manufacture of gaslight valves—for pulling the valves—and some of sizes 3 and 6 for the same purpose.

Mr. Ketcham, of the firm of Ketcham & McDougall, manufacturers of automatic eyeglass holders and gold and silver thimbles, testified that his firm used about 100,000 meters annually of foxtail chain in the manufacture of automatic eyeglass holders, and that 0½

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and in some cases 00½ on illustrative Exhibit A were used for that purpose. He also testified it was used in connection with a holder attached to a telephone to hold a pencil.

On the part of the Government it was testified by Mr. Paye, of the Paye, Baker Manufacturing Co., that his company uses the small size of this chain for draw strings on small mesh purses, for tassels on large mesh bags, for neck chains, for lavallieres, long chains, known as fan chains or lorgnette chains, also on rings used for carrying small coin holders or vanity cases. He could not give the quantity his firm used annually for such purpose. A mesh bag was received in evidence, marked Exhibit B, showing the uses of this chain as draw strings. The draw chain on this exhibit is a light-colored chain about the size of No. 5 on illustrative Exhibit A, and is used to keep the bag or purse closed. A mesh bag was also introduced in evidence, showing the use of this chain as tassels, the tassels thereon being about half an inch in length, of a smaller size than the draw chain, and attached to the bag evidently for ornamental purposes. The merchandise in dispute was not used for the manufacture of mesh purses or mesh bags.

Mr. Charles A. Whiting's testimony on the part of the Government was to the same effect. He stated his firm used from 10,000 to 12,000 meters per year of similar chain, half foxtail and half cable.

Mr. Chapin, of the firm of Chapin, Hollister & Co., testified that they used foxtail chain as shown on illustrative Exhibit A, sizes 0, 1, 2, 3, 4, and some of Nos. 5 and 6, but not so much at present of the last two numbers, "as a component part for stringing solid gold, sterling silver, and gold-plated commodities." He also testified that his firm sold it to retail jewelers for use in their repair department as a finished article on reels by the yard and as finished articles in neck chains, guard chains, and long chains, including fan chains, stone-mounted guard chains, and fancy chains. He also said that for the past four years his firm had averaged in all qualities of foxtail chain from 5,000 to 8,000 meters per year.

The merchandise was classified by the collector under paragraph 356 of the tariff act of 1913, as—

> * * * Other materials of metal, whether or not set with glass or paste, finished or partly finished, separate or in strips or sheets, suitable for use in the manufacture of any of the foregoing articles in this paragraph.

Duty was assessed thereon at 60 per cent ad valorem.

It is claimed by the protestants that the merchandise is not dutiable under this paragraph, but under paragraph 167 of the same act as—

> Articles or wares not specially provided for in this section; * * * if composed wholly or in chief value of iron, steel, lead, copper, brass, nickel, pewter,



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zinc, aluminum, or other metal, but not plated with gold or silver, and whether partly or wholly manufactured—

at 20 per cent ad valorem.

The facts as shown by this record establish the following propositions:

(1) The merchandise consists of brass and German-silver foxtail chain; (2) valued at less than 30 cents per yard; (3) that the predominating use of the foxtail varieties of chain in the numbers referred to is for eyeglass holders and gas and electric light fixtures. It is not used for the manufacture of mesh bags or purses. Its use in a mesh bag is as a draw string or tassels.

The question then arises, Being suitable for use in the manufacture of articles mentioned in paragraph 356, shall it be dutiable thereunder, rather than under the quoted portion of paragraph 167 as metal articles? Do the words "suitable for use" govern the classification of the merchandise, although such use is minor in comparison to its general use? Is "composed wholly or in chief value of brass or other metal," as found in paragraph 167, more specific than "mesh and other materials of metal * * * suitable for use in the manufacture of any of the foregoing articles," as found in paragraph 356?

In Hartranft *v.* Langfeld (125 U. S., 128), the Supreme Court of the United States had before it the proper classification of velvet ribbon made of silk and cotton, silk being the material of chief value, known as trimmings, chiefly used for making or ornamenting hats, bonnets, and hoods, but sometimes used for trimming dresses. The question arose, Was this merchandise dutiable under Schedule M of the act of March 3, 1883, as "hats, and so forth, materials for trimmings," or subject to a duty of 50 per cent ad valorem under Schedule L of that act as "goods, wares, and merchandise not specially enumerated or provided for in this act made of silk, or of which silk is the component material of chief value?" It was shown by the testimony that the merchandise was suitable for either purpose named in those paragraphs. The importer contended its general use as trimmings for hats, bonnets, and hoods should govern, as that was the predominating use to which the merchandise was placed. The lower court instructed the jury fully on the question of predominating use, which instruction was approved by the Supreme Court, and we therefore set the same out in full:

It is the use to which these articles are chiefly adapted, and for which they are used, that determines their character within the meaning of this clause of the tariff act. It would in my judgment be a fair construction of the meaning of this act to say that because certain articles are indifferently adapted for use for different purposes either of these purposes may determine the rate of duty. It is the predominant use to which articles are applied that determines their character. It certainly could not have been the intention of Congress in framing this clause of the law to admit the importation, at a low rate of duty,

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of articles which may be used for certain purposes, but which are used chiefly for another and different purpose.

Judge Matthews then states in the opinion:

The contention which appears to have been made on behalf of the Government on the trial of the cause, that these velvet ribbons could not be classified as trimmings used for making or ornamenting hats, bonnets, and hoods, within the meaning of the section levying the duty of 20 per cent ad valorem, unless they were shown to have been used exclusively for that purpose, is not insisted upon by the Solicitor General in this court. It was very properly abandoned, the charge of the court upon that point being, in our opinion, clearly right.

Therefore in the case at bar we start with the proposition that exclusive use is not a necessity to establish suitability. Now, is "suitability for use" stronger than "predominating use" in determining the classification of an article?

In Magone *v.* Wiederer (159 U. S., 555) the Supreme Court of the United States again had before it the question of predominating use as against suitability for use. In that case the merchandise consisted of pieces of glass, square, oblong, or round, with ground or beveled edges. The invoices described it as "glass unsilbert," giving their respective dimensions, and also as "parts of watches." The collector assessed it as "articles of glass, cut," under paragraph 135 of the tariff act of March 3, 1883, while the importer claimed it was dutiable either as parts of watches, under paragraph 494 of that act, which assessed duty upon watches and watch materials, or as parts of clocks. The opinion was written by Justice White. He stated:

The instructions which were refused asked the court to rule that exclusive use was the correct criterion to determine the classification. The error of this contention seems obvious from the most casual consideration. If exclusive use were made the test, then an exception would destroy the rule; for, however general and universal the use of a particular article might be, if exceptionally used for another purpose, such use would destroy the effect of the general and common use and make the exception the controlling factor. It is urged that if exclusive use is not made the criterion it will be impossible to assess duties, because of the difficulty of ascertaining the chief or general and common use; but it is manifest that this argument of inconvenience is a mistaken one, and that, on the contrary, it would be impossible to resort to use as a criterion of classification if exclusive use must be ascertained in so doing, for that which is generally and commonly done may be known, but that which is so universally done as to be without any exception is difficult, if not impossible, of ascertainment.

* * * * * * *

Thus it is impossible to state the proposition of exclusive use without being driven by the reason of things to abandon it and seek refuge in the theory of exclusive commercial use, or exclusively used in trade or commerce. It is equally impossible to state this last contention without resolving it into a question of commercial designation.

The court then approved the holding of the lower court, that the merchandise was parts of clocks, and that use for that purpose being the predominant use should govern.

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There is no question in the case at bar of commercial designation or commercial use.

The foregoing were the holdings of the Supreme Court of the United States prior to the enactment of the present statute. What has the Court of Customs Appeals to say in reference thereto? We find it has followed the rule enunciated by the Supreme Court of the United States.

In United States *v.* MacNaughton (5 Ct. Cust. Appls., 114; T. D. 34166) the court had before it the question of whether white oak logs, imported substantially as the tree had fallen when cut down, were dutiable as round timber used for spars or in building wharves, or free as round unmanufactured timber. In sustaining the board the court stated:

> Inasmuch as the statute, paragraph 200, makes use the determining factor of all merchandise included therewithin for dutiable purposes, the unquestionable rule of law in the case, if it should appear that the imported merchandise was chiefly used either for spars or for building wharves, would make it properly classifiable for duty under the provisions of paragraph 200. That principle has been so often enunciated it seems trite to argue the question.

The court then cited the causes heretofore set out, decided by the Supreme Court of the United States.

The court then continued:

> Does the testimony in this record establish that the *chief use* of such timbers as these is for the construction of wharves? [Italics ours.]

We have nothing whatever to do with the court's further conclusion in that case, but wish to apply the rule thus enunciated to the facts in the case at bar.

In Vandiver *v.* United States (1 Ct. Cust. Appls., 194; T. D. 31219) certain cedar boxes were classified under paragraph 459 of the act of 1897 as smokers' articles, and articles of bronze, glass, and china under paragraphs 96 and 100 of the act as decorated china and decorated glass, respectively. The protestants alleged the boxes were dutiable under paragraph 208 as manufactures of wood, and as manufactures of leather under paragraph 450 of the act, and that the articles classified as decorated china and decorated glass were dutiable under paragraph 193 thereof as manufactures of metal. On the question of general use the court held that an article imported may not be confined in use exclusively to the purpose for which it was imported, and, if sold to persons who use it for other purposes, its classification was not thereby changed and the rate of duty should be assessed for its general and commonly known use.

Thus we have the Supreme Court of the United States and the Court of Customs Appeals in harmony with the commonly accepted opinion that with reference to the classification of merchandise, wherein its use becomes a factor, the general or common use to which the merchandise is applied governs its classification.

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In the case at bar the use as draw chains or tassels for mesh bags or purses, and as long chains, is a minor use for this foxtail chain in comparison to that of eyeglass holders and gas and electric fixtures. In fact the combined use of the article as draw chains, tassels, and neck chains by all the parties testifying for the Government is infinitesimal in comparison to the use in a single year by either the General Gaslight Co. or Ketcham & McDougall, representatives of whom testified for the protestants, for gaslight valves or eyeglass holders. It therefore seems to us the predominant use to which the merchandise is put is not in the manufacture of draw chains or tassels for mesh bags or purses, but of eyeglass holders and gas and electric fixtures.

The clause of paragraph 356 under which it was classified does not mention this specific merchandise; it merely provides that—

> Stampings, galleries, mesh, and other materials of metal, * * * suitable for use in the manufacture of any of the foregoing articles in this paragraph—

are dutiable at 50 per cent ad valorem. This clause makes use a prominent factor in arriving at a correct classification. Paragraph 167 in specific terms refers to articles not specially provided for composed wholly or in chief value of iron, steel, lead, copper, *brass*, nickel, pewter, zinc, aluminum, *or other metal*, not plated with gold or silver, and fixes a duty thereon of 20 per cent ad valorem. This is more specific than the term "suitable for use" in paragraph 356.

The rule above enunciated received further sanction in Smith *v.* United States (93 Fed., 194). In that case the Circuit Court of Appeals, Second Circuit, declared that the test of predominant use as applied to the classification of an article for duty under the tariff act of 1890 was only resorted to where necessary to properly classify an article falling within two or more classifications, either of which, standing alone, would adequately describe it, and where the article is enumerated by reference to its use. It can only be classified under paragraph 356 by reason of its use, and if that use is minor, then it must fall for dutiable purposes under the more specific provision for articles composed wholly or in chief value of brass or other metal, not plated with gold or silver, as provided for in paragraph 167.

We have ample proof that the general use of this foxtail chain is for eyeglass holders and gas and electric light fixtures. This use predominates, as shown by this record, on nearly 75 per cent of the importations of the foxtail chain under consideration. An inspection of the exhibit introduced in evidence (Exhibit 1) discloses its unfitness as a draw chain or tassels for a mesh bag, or a neck chain or lavalliere.

It appears that this board on December 13, 1915, in protest 736995, held 321 meters of unfinished brass chain, hexagon No. 1, suitable for use in the manufacture of certain of the articles mentioned in paragraph 356, viz, finished chains designed to be worn on the person,

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dutiable as claimed by the Government in the case at bar. That case, however, was submitted on stipulation. There was no testimony offered by either side, and the stipulation itself practically admitted the merchandise should be classified under paragraph 356. (Abstract 38944).

We cite this case for the reason we wish to be consistent in our opinions. Law is based upon facts, and we had but one fact in the foregoing case, viz, that the chain in question was suitable for use in finished chains designed to be worn on or about the person. We were without testimony showing its use for any other purpose, and we therefore held it dutiable under the last part of paragraph 356. Our holding in the case at bar is based upon testimony taken in open court, and the facts sustain the contention of the importer that the foxtail chain of the sizes mentioned is dutiable according to its predominating use as metal, viz, in the manufacture of eyeglass holders and gas or electric light fixtures and within the provisions of paragraph 167 at 20 per cent ad valorem.

As to the so-called snake chain the protestants merely proved a sample of the merchandise and offered no evidence as to its use.

The protests are sustained as indicated as to foxtail chain items 00½, 0½, 1½, 3, 4, 5, and 6, but as to the snake chain or round chain on invoice connected with entry 60093, protest 800077, and in all other respects, except as noted, overruled.

The decision of the collector is modified accordingly in each case.

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DISSENTING OPINION.

BROWN, *General Appraiser*, dissenting: I am unable to concur in the conclusion reached in this case as to the items of so-called foxtail chain, because the words in paragraph 356, reading "suitable for use in the manufacture of any of the foregoing articles in this paragraph" would seem to preclude the question of chief use and require that the classification should be sustained if (as I think the testimony shows) the merchandise is suitable in a practical commercial way for use in the manufacture of chains, mesh bags, or other articles enumerated in the paragraph, whether or not the principal use is for some other purpose.

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*Abstracts of decisions of the Board of General Appraisers.*

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*Board 1*—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

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BEFORE BOARD 2, NOVEMBER 6, 1916.

**No. 40369.**—Protest 786445 of Bamberger, Stern & Co. (New York).

COVERS FOR DISPLAY ALBUMS.—Fashion display album covers of paper with ornamental printing thereon, classified as manufactures of paper at 25 per cent

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ad valorem under paragraph 332, tariff act of 1913, are claimed dutiable as printed matter at 15 per cent under paragraph 329.

Opinion by FISCHER, G. A. The album covers in question were found to have on the outside an insignificant amount of printed matter and were held properly classified under paragraph 332. G. A. 7967 (T. D. 36701) followed.

**No. 40370.**—Protest 794432-58150 of Sears, Roebuck & Co. (Chicago).

JEWELERS' TWEEZERS—MAGNIFYING GLASSES.—Jewelers' tweezers composed entirely of metal and classified under the provision for "nippers and pliers of all kinds," in paragraph 166, tariff act of 1913, at 30 per cent ad valorem, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167. Jewelers' magnifying glasses or loupes set in hard-rubber frames and having a fixed focus, classified as optical instruments at 35 per cent under paragraph 93 are claimed dutiable as microscopes at 25 per cent under paragraph 94.

Opinion by FISCHER, G. A. There was testimony that these articles corresponded in principle with certain merchandise covered by previous decisions of the board, but inasmuch as the records in the former cases were not offered in evidence, the protest was overruled.

**No. 40371.**—Protest 791590 of C. J. Tower (Buffalo).

HAY-KNIFE PLATES.—The question here is whether articles invoiced as hay-knife plates are dutiable as hay knives, finished or unfinished, without handles, at 25 per cent ad valorem, under paragraph 130, tariff act of 1913, or are entitled to free entry as agricultural implements, under paragraph 391, or dutiable as manufactures of metal at 20 per cent, under paragraph 167.

Opinion by FISCHER, G. A. These steel plates as finally used have rivetted to them small knives. The plates are attached to handles and the finished article is a hay knife. They were held properly classified under paragraph 130. Quirk *v.* United States (6 Ct. Cust. Appls., 444; T. D. 35983) followed.

**No. 40372.**—Protest 797900 of Bacon & Co. (Boston).

BAR IRON.—Round bar iron, classified as wire rods at 10 per cent ad valorem, under paragraph 113, tariff act of 1913, is claimed dutiable as bar iron at 5 per cent under paragraph 103.

Opinion by FISCHER, G. A. On the authority of Abstract 39871 round bar iron was held dutiable under paragraph 103.

**No. 40373.**—Protest 750691 of Spielmann & Co. (New York).

SILK MOURNING CRAPES.—Silk mourning crapes, 27 inches in width, invoiced as trimmings and classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as woven silk fabrics at 45 per cent under paragraph 318.

Opinion by HOWELL, G. A. On the authority of Auffmordt *v.* United States (7 Ct. Cust. Appls., —; T. D. 36320), silk mourning crapes were held dutiable under paragraph 318, as claimed.

**No. 40374.**—Protests 778722-56677, etc., of G. W. Sheldon & Co. et al. (Chicago).

METAL-THREAD LACES AND NETTINGS.—The goods in question are nettings and laces, composed in chief value of tinsel threads or metal threads, which were classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913.

Opinion by HOWELL, G. A. Protests unsupported; overruled. Siegman *v.* United States (7 Ct. Cust. Appls., —; T. D. 36506) noted.

**No. 40375.**—Protest 800137 of Woolf & Shulhof (New York).

WEARING APPAREL, SPANGLED—APPLIQUÉD GOODS.—Articles of wearing apparel composed in chief value of silk, ornamented with spangles, classified as appli-

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quéd articles at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as silk wearing apparel at 50 per cent under paragraph 317.

Opinion by HOWELL, G. A. The articles in question were held not to be appliquéd but dutiable as silk wearing apparel under paragraph 317. Loewenthal *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464) followed.

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BEFORE BOARD 3, NOVEMBER 6, 1916.

**No. 40376.**—Protests 799917, etc., of Budde & Westermann (New York).

ALBUMEN.—Merchandise invoiced as "Poudre a Jullien" and classified as a nonenumerated manufactured article under paragraph 385, tariff act of 1913, is claimed entitled to free entry as albumen under paragraph 392.

Opinion by HAY, G. A. The merchandise, found from the report of the analyst to be albumen, was held free of duty under paragraph 392. Some of the merchandise was reported to be albumen mechanically combined with animal charcoal and the protests were overruled as to this.

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BEFORE BOARD 1, NOVEMBER 8, 1916.

**No. 40377.**—Protests 804266–59160, etc., of James H. Furman Co. (Chicago).

MATCHES.—Matches with colored sticks, classified at 25 per cent ad valorem under paragraph 345, tariff act of 1913, are claimed dutiable at 3 cents per gross under the same paragraph.

Opinion by MCCLELLAND, G. A. Protests unsupported; overruled.

**No. 40378.**—Protest 804404 of J. H. Lynch (Boston).

FEATHERS.—Crushed and shredded geese feathers classified at 40 per cent ad valorem under paragraph 347, tariff act of 1913, are claimed dutiable under the provision for crude feathers in the same paragraph at 20 per cent.

Opinion by MCCLELLAND, G. A. Protest unsupported; overruled.

**No. 40379.**—Protest 791138 of G. W. Sheldon & Co. (New York).

CELLULOID SHEETS.—The question here is whether certain celluloid sheets are dutiable as polished, at 40 per cent ad valorem, or as not polished, at 25 per cent under paragraph 25, tariff act of 1913.

Opinion by SULLIVAN, G. A. It was found that the merchandise is transparent celluloid sheets that have been placed between metal sheets and pressed, which is not a polishing process. It was held dutiable at 25 per cent under paragraph 25. United States *v.* Cohn (6 Ct. Cust. Appls., 426; T. D. 35979) followed.

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## (T. D. 36800.)

### *Personal effects.*

UNITED STATES *v.* HUTCHINGS (No. 1729).

CONSTRUCTION, PARAGRAPH 642, TARIFF ACT OF 1913—"ACQUIRED ABROAD."

Merchandise ordered by appellee in a foreign country from a foreign country for delivery in a foreign country, but delivered to and paid for by appellee in this country, was not "acquired abroad" within the meaning of paragraph 642, tariff act of 1913, which permits free entry of up to, but not

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exceeding, $100 in value of articles acquired abroad by residents of this country for personal or household use or as souvenirs or curios, but not bought on commission or intended for sale.

United States Court of Customs Appeals, November 2, 1916.

APPEAL from Board of United States General Appraisers, Abstract 39605.

[Reversed.]

*Bert Hanson*, Assistant Attorney General (*Robert Hardison*, special attorney, of counsel), for the United States.

Submitted on record by appellee.

[Oral argument October 11, 1916, by Mr. Hanson.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

The importer claimed free entry of certain wearing apparel under the last provision of paragraph 642 of the act of 1913, which provides—

That up to but not exceeding $100 in value of articles acquired abroad by such residents of the United States for personal or household use or as souvenirs or curios, but not bought on commission or intended for sale, shall be admitted free of duty.

The evidence shows that Mrs. Hutchings went abroad in May, 1914, and was in Europe at the time the war broke out. She sailed hurriedly from Germany and arrived in New York September 1, 1914. About the 1st of July, while in Rome, she sent an order to Walpole Bros. (Ltd.), of Dublin, for three dresses to be made for her daughter, who accompanied her. She states, "I ordered them; I didn't buy them." She also states that they were to have been delivered to her while abroad and aboard ship at Calais. She states further:

The goods were ordered from Dublin. I wrote from Rome. I ordered the dresses to be made and sent to me at the steamer, so my little girl could wear them home.

The testimony fails to show that there was any formal acceptance of the order. All that appears is a bill of Walpole, dated November 18, 1914. The dresses were not in fact received until May, 1915, the bill of November 14 having been paid February 1, 1915. As a matter of fact, the appellee did not sail from Calais but from Germany, arriving in this country September 1, 1914.

It would appear from this statement of facts that the dresses were neither acquired abroad nor possessed by the appellee when returning to this country. The most that can be said is that up to the time that Mrs. Hutchings sailed for this country she had an order out for goods to be delivered, which order must have been

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modified by her sudden departure, and that the title had not passed to her. In other words, she had not acquired the property.

There is no statement of the ground upon which the board held this importation free of duty, except the recital of the facts, and the appellee is not represented by counsel in this court. We are, however, unable to see how it can be said that these goods were acquired abroad, and for this reason reverse the decision.

*Reversed.*

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(T. D. 36801.)

*Rice-bead curtains.*

UNITED STATES *v.* MORIMURA BROS. (No. 1724).

1. CONSTRUCTION, PARAGRAPH 333, TARIFF ACT OF 1913.

The language "curtains, and other articles not embroidered nor appliquéd," paragraph 333, tariff act of 1913, does not exclude such articles as are not susceptible of being embroidered or appliquéd.—Fensterer & Ruhe *v.* United States (1 Ct. Cust. Appls., 93; T. D. 31110) distinguished and limited.

2. BEAD CURTAINS, HOW DUTIABLE.

Curtains composed in chief value of glass or rice paste beads strung on cotton threads suspended from a horizontal bar or rod are dutiable as "curtains * * * composed wholly or in chief value of beads * * *," paragraph 333, tariff act of 1913.

United States Court of Customs Appeals, November 2, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7889 (T. D. 36343).

[Reversed.]

*Bert Hanson*, Assistant Attorney General (*Thomas J. Doherty*, special attorney, of counsel), for the United States.

*B. A. Levett* for appellees.

[Oral argument October 19, 1916, by Mr. Doherty and Mr. Levett.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the court:

Paragraph 333 of the tariff act of October 3, 1913, provides as follows:

Beads and spangles of all kinds, including imitation pearl beads, not threaded or strung, or strung loosely on thread for facility in transportation only, 35 per centum ad valorem; curtains, and other articles not embroidered nor appliquéd and not specially provided for in this section, composed wholly or in chief value of beads or spangles made of glass or paste, gelatin, metal, or other material, 50 per centum ad valorem.

The merchandise in this suit is composed in chief value of beads strung on cotton thread suspended from a horizontal bar or rod. These beads are made of rice paste or glass, and the importation was assessed under the last clause of the above paragraph.

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Various protests were made against this assessment, and upon hearing before it the Board of General Appraisers held in substance that because paragraph 333 contained the words "not embroidered nor appliquéd" after the word "articles" in the last clause thereof, these curtains were not dutiable thereunder in view of the fact found by it that they were not susceptible of being embroidered or appliquéd. The board's conclusion was rested upon the doctrine of the case of Fensterer & Ruhe *v.* United States (1 Ct. Cust. Appls., 93; T. D. 31110), in which this court, following other cases, held that under paragraph 96 of the tariff act of 1897, which it is unnecessary to quote here, the fact that provision was made for certain articles decorated or ornamented in any manner at one rate of duty, and, if not so ornamented or decorated, at another rate, it must appear that the merchandise was susceptible of such decoration or ornamentation to be classifiable under the paragraph. The importers here rely upon the rule of that case to sustain the decision below.

Upon the part of the Government it is urged in substance that the doctrine of the cited case is not applicable to said paragraph 333, and that therefore the judgment below should be reversed.

At the outset it may with propriety be observed that in the case of Fensterer & Ruhe *v.* United States this court somewhat reluctantly followed what it deemed to be the rule of construction applicable to the paragraph there under consideration, because of the interpretation which identical language in an earlier statute relating to the same subject matter had received in other Federal courts, but that rule has never been extended by this court.

It will be noted that in paragraph 421 of the act of 1909, the ancestor of paragraph 333 of the act of 1913, the clause comparable with the one here involved, read "fabrics, net or nettings, laces, embroideries, galloons, wearing apparel, ornaments, trimmings, curtains, fringes, and other articles not specially provided for in this section" and did not contain the words "not embroidered nor appliquéd," while in paragraph 333 all the *eo nomine* descriptions except curtains are omitted, and the words "and other articles not embroidered nor appliquéd" are inserted apparently in lieu of such *eo nomine* and other designations, and also that the new paragraph contains no provisions for articles that *are* embroidered or appliquéd.

Referring to the cases, it appears that one of the considerations which seem to have led to the adoption of the rule followed by this court in Fensterer & Ruhe *v.* United States was the fact that the paragraph in question contained provisions for the assessment of duty at different rates for both the articles that were decorated and those that were not decorated, enumerated in the paragraph, it being said in one of the cases that that language apparently indicated that

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Congress had in mind articles that were susceptible of decoration, and further, that, although such an argument might support some particular theory of construction, it was not controlling, the most persuasive argument being the probable congressional intent. See United States *v.* Downing (201 U. S., 354), Hempstead *v.* United States (158 Fed., 485), and Stern *v.* United States (105 Fed., 937).

We are unwilling in the case at bar to extend the doctrine of the Fensterer case to paragraph 333. There is nothing in the language and nothing in the history of the paragraph, so far as called to our attention, that suggests that Congress had in mind the thought that curtains composed wholly or in chief value of beads or spangles made of glass or paste, gelatin, metal, or other material to be dutiable thereunder must be susceptible of being embroidered or appliquéd. Indeed, it is not beyond belief that Congress regarded it as improbable that curtains wholly or in chief value of such beads or spangles would, as a general thing, be either embroidered or appliquéd.

We think the language is, however, suggestive of the thought that Congress intended that the curtains of paragraph 421 of the preceding act composed wholly or in chief value of beads, spangles, etc., without regard to their susceptibility of being embroidered or appliquéd, should remain classifiable thereunder, and that other articles which in fact were not embroidered or appliquéd, likewise composed, should receive the same classification, leaving to the other paragraphs the rule for their classification if *in fact* embroidered or appliquéd. This seems to us consistent with the apparent plan of revision of various other paragraphs of the act of 1909, which resulted in making dutiable under paragraph 358 of the act of 1913 a large number of articles embroidered or ornamented theretofore classifiable under one of several different paragraphs of the earlier act. Then, too, the punctuation of paragraph 333, we think, warrants the conclusion that the words "embroidered" and "appliquéd" do not relate to curtains but are limited to "other articles" composed wholly or in chief value of beads or spangles made of materials afterwards therein enumerated.

The conclusion we reach is analogous to that heretofore announced in the case of Scientific Supply Importing Co. *v.* United States (5 Ct. Cust. Appls., 56; T. D. 34094). See also United States *v.* Wells, Fargo & Co. (1 Ct. Cust. Appls., 158; T. D. 31211), Hensel *v.* United States (3 Ct. Cust. Appls., 117; T. D. 32366), and Kaskel *v.* United States (4 Ct. Cust. Appls., 38; T. D. 33264).

For the reasons above stated, we think the judgment of the Board of General Appraisers upon the protests involved in this appeal ought to be reversed, and it is so ordered.

*Reversed.*

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(T. D. 36802.)

*Sugar machinery.*

DOWNING & CO. *v.* UNITED STATES (No. 1749).

1. SUGAR-MANUFACTURING MACHINERY.

A machine used to convert crystalline into amorphous sugar for making chocolate is not admissible free of duty as "machinery for use in the manufacture of sugar" under paragraph 391, tariff act of 1913, but dutiable as a manufacture of metal not specially provided for under paragraph 167. It is a machine for use in the manufacture of chocolate rather than sugar. Whether or not it would be admissible free of duty if used in this country for manufacturing amorphous sugar directly from cane or beet juice and if amorphous sugar were in ordinary use in this country is not decided.

2. USE—ACTUAL, NOT POSSIBLE, THE TEST.

Proof that a machine *actually* used in making chocolate is *susceptible* of being used in making sugar would not be sufficient to make it classifiable under paragraph 391, tariff act of 1913, as "machinery for use in the manufacture of sugar."

United States Court of Customs Appeals, November 2, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7925 (T. D. 36528).

[Affirmed.]

*Allan R. Brown* for appellants.

*Bert Hanson*, Assistant Attorney General (*Martin T. Baldwin*, special attorney, of counsel), for the United States.

[Oral argument October 26, 1916, by Mr. Brown and Mr. Baldwin.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the court:

The merchandise in this case is a machine which was assessed as a manufacture of metal not specially provided for under paragraph 167 of the tariff act of 1913. The importers, the appellants here, claim it to be entitled to free entry under paragraph 391 of the same act, relying upon the particular part thereof which reads as follows: "Machinery for use in the manufacture of sugar." The only question is whether that claim should be sustained. The Board of General Appraisers affirmed the collector's classification.

In United States *v.* American Express Co. (6 Ct. Cust. Appls. 494; T. D. 36124) Smith, Judge, speaking for this court said, referring to the part of paragraph 391 here under consideration:

> In our opinion the obvious intent of the provision was to favor the sugar-making industry and give the benefit of free entry at least to all machinery peculiar to and chiefly or exclusively used by sugar factories. That is to say, any machine constituting a necessary and essential part of the equipment of sugar factories and which is exclusively or chiefly used by them comes within the designation of "machinery for use in the manufacture of sugar."

We are not now disposed to disagree with our views so recently expressed as to the *purpose* of the provision under consideration and

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with that in mind proceed to inquire whether the machine in question is "machinery for use in the manufacture of sugar."

But one witness, who was really the importer in this case, testified in the appellants' behalf. He is engaged in the sugar machinery business, and ordered this machine abroad. After its importation it was set up and operated in the factory of Rockwood & Co., chocolate manufacturers, in Brooklyn, N. Y. In this factory a sirup is made by melting a crystalline sugar in another machine, which sirup is then processed by the imported machine, with the result that an amorphous sugar is produced, and this in turn is there used in the manufacture of chocolate.

The witness testified in substance that amorphous sugar is sometimes called "sand sugar" and is the standard sugar of Portugal and Brazil, where it is in common daily use in restaurants, cafés, and hotels, much as crystalline or granulated sugar is in this country; that the ordinary processes of manufacturing sugar from cane or beet juice result in the crystalline product; that in the manufacture of chocolate amorphous sugar is preferable to crystalline because it unites much more easily with the chocolate; that the machine in question possesses the ability of transforming crystalline sugar when reduced to sirup directly into the amorphous article; that if it were desired to convert the cane or beet juice into the amorphous product, this machine is adapted to that use; that the idea of the inventor of the machine was to establish a "short cut" in the making of sugar; that the process of the machine is really one of aiding in the evaporation of the water, which, when applied to cane or beet juice, would leave such impurities in the sugar as were in the juice; that other processes or machines would be necessary to produce a refined sugar therefrom; and that he had seen one other like machine in operation in London, where it was employed in a biscuit or cracker making plant in much the same manner as in the Rockwood factory.

While the witness testified fully as to what in his opinion this machine was capable of doing as far as concerns the manufacture of sugar from cane or beet juice, his evidence is based upon his knowledge of the percentage of sugar in such juice and the processes of the machine instead of its actual employment for that purpose in the United States. As showing the possible value of the machine in this country in the manufacture of sugar, we quote from his evidence the following:

Q. Would that sort of a machine be suitable for the ordinary commercial treatment of cane or beet sugar?—A. Yes; if you could get the people to buy the sugar.

Q. You couldn't do that in this country, could you?—A. Could do it; yes. It is simply a commercial proposition.

Q. You never tried that, of course?—A. No, sir.

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It is apparent from the testimony of the witness that he has seen but two machines of this character, neither of which is employed in the manufacture of sugar, unless the described operation in the Rockwood & Co. factory be such. It may be further observed that there is no evidence or claim that this machine was imported for use or has been used in any manner except as already set forth, and there is no claim or evidence that any like machines have ever been imported into this country.

We think it ought not to be held upon this record that the machine is entitled to free entry, as claimed. It is not employed in the sugar-making industry. Its use does not seem to be of benefit to that industry, but, rather, is beneficial only to the chocolate-making business, and, although an amorphous sugar results from its operation, the fact remains that the *sugar has already been produced from the raw material*, and the real function of the machine is to assist in its transformation from the crystalline to the amorphous form, which condition is required or is desirable in the manufacture of chocolate. The fact that it may be susceptible of a use which would bring it within the paragraph ought not to be successfully invoked in its favor until it shall at least appear that it has been applied or is intended to be applied to that use here. This may or may not happen. When it does will be time to consider whether or not the statute is applicable.

The judgment of the Board of General Appraisers is *affirmed*.

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## (T. D. 36803.)

*Silk comfortables—Appliquéd articles—Five per cent discount.*

UNITED STATES *v.* MCGIBBON & CO. (No. 1470).

1. "APPLIQUÉD," DEFINITION.

"Appliquéd" means ornamented with a pattern, which has been cut out of another color or stuff, applied or transferred to a foundation.

2. BINDING OR EDGING NOT APPLIQUÉ.

A silk cord attached around the edges of a comfortable as or simulating a binder or fancy edge, without being cut from another article, and without being laid on the comfortable in or to form any motif or figure, does not constitute an appliqué.

3. APPRAISER'S CONCLUSION OF LAW.

Classification is not the function of an appraiser, and no presumption attaches to his legal conclusions. His statement that the silk cord was "appliquéd all around the edge of the comfortable" is his conclusion of law.

4. PLEADING, TIME FOR, FORM OF.

A claim for classification originating in appellant's brief in this court, not specified in the exceptions, and not raised before and presented to the Board of United States General Appraisers, is not entitled to the consideration of this court.

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5. FIVE PER CENT DISCOUNT.[a]

Goods imported in American vessels are entitled to a 5 per cent tariff discount under subsection 7 of paragraph J of section 4, tariff act of 1913.

6. SILK COMFORTABLES WITH SILK CARD EDGING, HOW CLASSIFIABLE.

Comfortables in chief value of silk, edged with a silk cord, are not classifiable as appliquéd, under paragraph 358, tariff act of 1913, but as a manufacture of silk not specially provided for, under paragraph 318.

## United States Court of Customs Appeals, November 2, 1916.

APPEAL from Board of United States General Appraisers, Abstract 36744 (T. D. 34865).

[Affirmed.]

*Bert Hanson*, Assistant Attorney General (*Thos. J. Doherty*, special attorney, of counsel), for the United States.

*Brooks & Brooks* (*F. W. Brooks, jr.*, of counsel) for appellees.

[Oral argument January 20, 1915, by Mr. Hanson and Mr. F. W. Brooks, jr.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

This was an importation of comfortables in chief value of silk edged with a silk cord.

The appraiser reported that the silk cord was "appliquéd all around the edge." There are no samples and the case was submitted upon the record. The "5 per cent" issue is also here. The point litigated is whether the articles are dutiable under the provisions of paragraph 358, tariff act of 1913, as "all articles * * * appliquéd, * * * any of the foregoing by whatever name known; * * * trimmings not specially provided for; * * * and articles made in whole or in part of any of the foregoing fabrics or articles;" or, under paragraph 318 of that act, as "all manufactures of silk (or of which silk is the component material of chief value), not specially provided for in this section."

The Board of General Appraisers sustained the protest upon authority of United States *v.* Hamburger Levine Co. (5 Ct. Cust. Appls., 217; T. D. 34382). In that case the court adopted with approval the definition of "appliqué" by Mr. General Appraiser Fischer (T. D. 21375) as follows:

> This merchandise corresponds with the definition given to the word "appliqué" by all the standard dictionaries and with the trade understanding. The general definition is: "Ornamentation with a pattern, which has been cut out of another color or stuff, applied or transferred to a foundation."

See also Krusi *v.* United States (1 Ct. Cust. Appls., 168; T. D. 31213).

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[a] REPORTER'S NOTE.—The merchandise in this case was imported in an American vessel.

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The court agrees with the board that that case rules this. The record discloses that the particular cord was attached around the edges of the article as or simulating a binder or fancy edge without being cut from another article and without being laid on this article in or to form any motif or figure. Such does not constitute an appliqué within the said decisions of this court.

The advice of the appraiser to the collector that the cord was "appliquéd all around the edge" of the comfortables was a conclusion of law, concluding the very question here in issue, and was not binding upon the collector or reviewing tribunals. In National Hat Pin Co. *v.* United States (5 Ct. Cust. Appls., 435; T. D. 34971) this court said:

> The statute does not clothe the appraiser with any duty respecting the classification of the merchandise. His function relates to the ascertainment of its dutiable value, and although the customs regulations (see arts. 1514 and 1515) require the appraiser, among other things, to describe the merchandise in such terms as will enable the collector to classify it for duty, yet this is by the express terms of the said regulations for the purpose of *assisting* the collector, and is not conclusive in any way upon his classification nor the correctness thereof. The collector may or may not classify according to the appraiser's description.

American Bead Co. *v.* United States (7 Ct. Cust. Appls., —; T. D. 36465); Marriott *v.* Bruno (9 How., 50 U. S., 619, 634); Earnshaw *v.* Cadwalader (145 U. S., 247, 249).

In the briefs the Government urges apparently for the first time that the merchandise is dutiable as articles in part of trimmings under the quoted parts of paragraph 358, *supra.* Appellees challenge this position upon the merits, and also upon the ground that being a Government appeal the point is not specified as error in the exceptions, was not raised before and presented to the board, and therefore comes too late.

The court is of the opinion that it is unnecessary to decide the question of merit as the latter point is well taken. United States *v.* Tappenbeck (7 Ct. Cust. Appls., —; T. D. 36258); Gallagher & Ascher *et al.* *v.* United States (4 Ct. Cust. Appls., 291; T. D. 33512); United States *v.* Rothschild & Co. (3 Ct. Cust. Appls., 251; T. D., 32566); Surgical Supply Importing Co. *v.* United States (3 Ct. Cust. Appls., 112; T. D. 32364).

The board's holding in favor of appellees upon the 5 per cent issue, the facts proven not being controverted, is in accord with the decision of this court in the Five Per Cent Cases (6 Ct. Cust. Appls., 291; T. D. 35508).

*Affirmed.*



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(T. D. 36804.)

*Beaded and spangled trimmings.*

UNITED STATES *v.* GAVIN & CO. (No. 1689).

1. CONSTRUCTION—DOUBT FAVORS IMPORTER.

When there is a doubt as to the construction of the law the doubt should be resolved in favor of the importer.

2. CONSTRUCTION, PARAGRAPH 333, TARIFF ACT OF 1913—"BEADED OR SPANGLED."

Context, legislative history, administrative practice, and judicial decision are in harmony with the theory that Congress intended paragraph 333, tariff act of 1913, to include articles wholly or in chief value of beads, spangles, or both. Consequently the words "composed wholly or in chief value of beads or spangles" must be construed as if written "composed wholly or in chief value of beads or spangles or beads and spangles."

3. BEADED AND SPANGLED SILK NETTING, HOW DUTIABLE.

Silk netting, ornamented with beads and spangles, the netting being more valuable than either and less valuable than both, is dutiable as "composed wholly or in chief value of beads or spangles" under paragraph 333, tariff act of 1913, and not as "trimmings * * * of whatever yarns, threads, or filaments composed" under paragraph 358.

United States Court of Customs Appeals, November 2, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7850 (T. D. 36141). [Affirmed.]

*Bert Hanson*, Assistant Attorney General (*Martin T. Baldwin*, special attorney, of counsel), for the United States.

*Allan R. Brown* for appellees.

[Oral argument October 25, 1916, by Mr. Hanson and Mr. Brown.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

The facts are not controverted. The merchandise is trimmings composed of a foundation of silk netting, ornamented with beads and spangles. The netting is of greater value than either the beads or spangles, considered separately, but the beads and spangles, considered together, are more valuable than the netting.

Upon importation the goods were classified for dutiable purposes under that provision of paragraph 358 of the tariff act of 1913 laying duty upon "trimmings * * * of whatever yarns, threads, or filaments composed." Appellees protested, alleging the appropriate classification to be as articles in chief value of beads and spangles under paragraph 333 of that act, as follows:

333. Beads and spangles of all kinds, including imitation pearl beads, not threaded or strung, or strung loosely on thread for facility in transportation only, 35 per centum ad valorem; curtains and other articles not embroidered nor appliquéd, and not specially provided for in this section, composed wholly or in chief value of beads or spangles made of glass or paste, gelatin, metal, or other material, 50 per centum ad valorem.

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The articles concededly not being embroidered or appliquéd that question is not in the case, and the sole issue presented for determination is, do the words "composed wholly or in chief value of beads *or* spangles" require the articles to be wholly or in chief value of one or the other—beads or spangles, singly—or in the statute applicable where the beads and spangles together are required to and do constitute the chief value of the articles?

The issue as presented is not satisfied by the determination whether the word "or" shall be read as "and," for that conclusion leaves us confronted with the result, if strictly followed, that only such articles are dutiable under the provision as are ornamented with both beads *and* spangles. No reason is apparent from the language of the paragraph why Congress should have intended either such limited application. Congress provided in the first part of the paragraph that "beads *and* spangles" should bear the same rate of duty (35 per cent ad valorem), and in the latter part that all articles in chief value of beads should bear the same rate of duty as all articles in chief value of spangles (50 per cent ad valorem). Therein the statute conclusively evidences the purpose to treat beads and spangles, whether as such or as parts of ornaments, alike for dutiable purposes. Having thus enacted, no purpose is apparent from the act or disclosed by the record that Congress intended a different rate should be applied upon an article wherein beads and spangles together constituted the chief value of the article. On the contrary, this conceded uniformity of accorded rates upon each, beads and spangles, in whatever condition found, argues a purpose of Congress to treat them alike or as one subject for dutiable purposes. In the presence of this expressed purpose of Congress, and in the view that both conjunctions "and" and "or" read in any other sense would not only defeat the purpose of Congress manifested by the words of the paragraph but lead to an absurd result, the court is of the opinion that the phrase "beads or spangles," as used in paragraph 333, was so used as a collective subject of legislation, embracing all articles composed of either or both of its elements.

That Congress so approached the subject and legislated accordingly is clearly shown by its legislative and judicial history. The practice seems to have been founded by the adoption by Congress in the tariff act of 1894 (par. 354) of the trade understanding that trimmings ornamented with certain beads and spangles were commercially known as "bead, beaded, or jet trimmings or ornaments," and the legislation therefor under the latter designation. That paragraph of said act contained a provision for "manufactures * * * known commercially as bead, beaded, or jet trimmings or ornaments." The history of the paragraph and litigation thereunder is recited in Woodbridge & Co.'s case, G. A. 4978 (T. D. 23232). Importers had

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long contended that various articles, including laces, nets, nettings, etc., ornamented with glass, gelatin, or metal beads and spangles were dutiable under that legislative classification.

The Board of General Appraisers in a long line of decisions, cited in the above case, had ruled against this contention. This ruling, however, was reversed by the Circuit Court of Appeals, Second Circuit, in Morrison *et al. v.* United States (107 Fed., 113), reversing E. A. Morrison & Son case, G. A. 3103 (T. D. 16224).

It was thus established (1) that trade and commerce had long and uniformly regarded such articles trimmed with beads and spangles as beaded articles; (2) that the words "bead, beaded, or jet trimmings or ornaments" as used in that tariff act embraced trimmings ornamented with both beads *and* spangles. That is to say, in trade and commerce and in tariff legislation the words beads and spangles were treated as and used interchangeably and collectively.

Then followed the act of 1897 (par. 408), providing for laces, etc., "composed wholly or in part of *beads or spangles* made of glass or paste, gelatin, metal, or other material." Clearly, under that act articles ornamented with both beads *and* spangles were made dutiable under the provision employing the words "beads *or* spangles." The congressional purpose seemed in harmony with the earlier trade understanding and the cited court rulings, which treated articles composed in part of both beads *and* spangles the same for trade and dutiable purposes as articles in part of beads or spangles singly. The same phraseology, save that "chief value" is substituted for "in part of," has been carried into the subsequent tariff acts, including the present law. When, therefore, this phrase is read in the light of its history and the other parts of the paragraph, the conclusion is unavoidable that Congress, following an established and uncontradicted usage of trade adopted in previous acts *in pari materia*, herein as heretofore, used the term "beads *or* spangles" collectively in the sense of including such articles whenever composed in chief value of either beads *or* spangles or both.

This conclusion is in harmony with the views of the court previously expressed. In Loewenthal & Co. *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464) this court, after reviewing all the paragraphs of the present tariff act *in pari materia* with an apposite paragraph, 333, reached the conclusion that it was the purpose to make that paragraph exclusive, in so far as the express limitations therein permitted for beaded articles. The same considerations appertain to spangled articles. It is the beaded *and* spangled article paragraph of the act. The construction urged by the Government is not within that holding, but contrary thereto, in that it would remove therefrom a class of articles composed in chief value of precisely the same materials made into both beads and spangles.

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Unquestionably there is much force in the argument of Government counsel which serves to establish a serious doubt as to which of the two constructions should obtain. The court is satisfied, however, that the framework of the paragraph read in connection with the history of the legislative subject tends most strongly to confirm the correctness of the board's decision. In any event the presence of that doubt entitles importers, appellees, to its benefit. The rule controlling that status of consideration, as expressed by this court in Goat and Sheepskin Import Co. *et al.* *v.* United States (5 Ct. Cust. Appls., 178–183; T. D. 34254), may well conclude this opinion.

With all applicable canons of construction conducing to the conclusion stated, in the presence of an obviously doubtful question of law, this court is bound to construe the statute that the importers * * * shall be accorded the benefit of the doubt. Woolworth *v.* United States (1 Ct. Cust. Appls., 120–122; T. D. 31119), United States *v.* Hatters' Fur Exchange (1 Ct. Cust. Appls., 198–202; T. D. 31237), United States *v.* Matagrin (1 Ct. Cust Appls., 309–312; T. D. 31406), United States *v.* Harper (2 Ct. Cust. Appls., 101–105; T. D. 31655), American Express Co. *v.* United States (3 Ct. Cust. Appls., 475–479; T. D. 33121), United States *v.* American Bead Co. (3 Ct. Cust. Appls., 509–515; T. D. 33166), Newhall *et al.* *v.* United States (4 Ct. Cust. Appls., 134; T. D. 33410).

*Affirmed.*

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## (T. D. 36805.)

### *Pituitary glands.*

FRANKFELD & CO. *v.* UNITED STATES (No. 1732).

1. CONSTRUCTION, PARAGRAPH 419, TARIFF ACT OF 1913.

Paragraph 419, tariff act of 1913, contains no general language. Consequently, only the things named in it are classifiable under it.

2. CONSTRUCTION, PARAGRAPH 545, TARIFF ACT OF 1913—"MEATS."

Paragraph 545, tariff act of 1913, contemplates such "meats" only as are of everyday consumption and the subject of the meat-inspection laws of the country, its States, and municipalities.

3. CONSTRUCTION, PARAGRAPH 477, TARIFF ACT OF 1913—"DRUGS"—SIMILITUDE.

Paragraph 477, tariff act of 1913, levies duty upon such drugs only as are named and as are like the ones named in the paragraph.

4. PITUITARY GLANDS, HOW DUTIABLE.

The pituitary glands of calves, imported for the purpose of making from them a watery liquid hypodermically injected in obstetric work, are not classifiable under paragraph 419, tariff act of 1913, because not enumerated. The fact that they can be eaten is not sufficient to make them classifiable as "meats" under paragraph 545. They are not dutiable as "drugs" under paragraph 477, because not named and not like any of the things named in the paragraph. There is no proof identifying them with the "antitoxins, vaccine virus, and all other serums derived from animals and used for therapeutic purposes" of paragraph 400. So far as is shown by the record in this case, their classification as nonenumerated unmanufactured articles under paragraph 385 must be affirmed.

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5. USE—ACTUAL, NOT POSSIBLE, THE TEST.

The fact that calves' pituitary glands, *actually* imported for use in making a medicine and *actually* so used, are *susceptible* of being eaten is not sufficient to make them classifiable as "meats," under paragraph 545, tariff act of 1913.

United States Court of Customs Appeals, November 2, 1916.

[Affirmed.]

*Crim & Wemple* (*William L. Wemple* and *George C. Winne* of counsel) for appellants.

*Bert Hanson*, Assistant Attorney General (*Robert Hardison*, special attorney, of counsel), for the United States.

[Oral argument October 24, 1916, by Mr. Wemple and Mr. Hanson.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

This appeal brings here for determination the proper dutiable classification, under the tariff act of 1913, of certain pituitary glands taken from calves and imported from Argentina. Pituitary glands are common to all animals, appearing on or under the surface of the brain, their function being vital and in connection with that organ. In calves at least they hang to the brain by a little stem rather close up to the under surface of the brain, being included therewith in the brain pan. They are a separate and distinct body, structurally a gland. They are imported frozen for transportation purposes. While the entire gland is imported, only about one-sixth of it—the posterior lobe—is used. This is cut out, is about the size of a white bean, of a brownish red color, and made into pituitrates; a watery liquid hypodermically injected in obstetric work. The rejected portion is thrown away. The only use disclosed by this record for these eliminations is as food for cats. The record suggests the possibility that in the human consumption of brains as food they might accidentally be so eaten, though it fairly shows they are not imported for and are unfit for human consumption. They were unknown to import commerce at the time of the enactment of the present tariff law and are of recent importation.

Upon importation they were assessed for dutiable purposes by the collector of customs at the port of New York as nonenumerated unmanufactured articles, paragraph 385 of said act. The importers protested, claiming them free of duty either under paragraph 419 or 545 of said act, and in one protest (798048) the further claim is made for free entry under paragraph 477 of that act.

The Board of General Appraisers overruled all the protests, and the importers appeal to this court for a review of that decision.

Paragraph 419 reads:

419. Bladders, and all integuments, tendons and intestines of animals and fish sounds, crude, dried or salted for preservation only, and unmanufactured, not specially provided for in this section.

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Unquestionably the testimony establishes that the articles are not one of these so enumerated, and there being no general language in the paragraph that claim fails.

Paragraph 545 provides:

545. Meats: Fresh beef, veal, mutton, lamb, and pork; bacon and hams; meats of all kinds, prepared or preserved, not specially provided for in this section: *Provided, however,* That none of the foregoing meats shall be admitted into the United States unless the same is healthful, wholesome and fit for human food and contains no dye, chemical, preservative, or ingredient which renders the same unhealthful, unwholesome or unfit for human food, and unless the same also complies with the rules and regulations made by the Secretary of Agriculture, and that, after entry into the United States in compliance with said rules and regulations, said imported meats shall be deemed and treated as domestic meats within the meaning of and shall be subject to the provisions of the act of June thirtieth, nineteen hundred and six (Thirty-fourth Statutes at Large, page six hundred and seventy-four), commonly called the meat-inspection amendment, and the act of June thirtieth, nineteen hundred and six (Thirty-fourth Statutes at Large, page seven hundred and sixty-eight), commonly called the food and drugs act, and that the Secretary of Agriculture be and hereby is authorized to make rules and regulations to carry out the purposes of this paragraph, and that in such rules and regulations the Secretary of Agriculture may prescribe the terms and conditions for the destruction for food purposes of all such meats offered for entry and refused admission into the United States unless the same be exported by the consignee within the time fixed therefor in such rules and regulations.

It would seem sufficient to point out that the record fairly and clearly shows the importations not only unfit for human consumption but that their sole and exclusive use is otherwise. The possible accidental consumption of them as a part of calves' brains so consumed, which was only surmised by one witness, if true, would not be tantamount to or approximate satisfactory proof of such, no more than similar accidental consumption of particles of the shell of an egg or the hull of a nut would establish such excrescences suitable for human consumption. Moreover, the provisos to paragraph 545 make certain the intent of Congress in the use of the term "meats" therein to refer to those of everyday consumption, which are the subject of the meat-inspection laws of the country, its States and municipalities, of which these importations are not one.

Indeed, the sole use and purpose of importation of this article being as and for a hypodermic injection in the form of a "watery liquid," as testified by the importers' witness, shows that the thing of use was the extract from and not the meaty part of the gland. All else seems to have been useless and unused. It was not, then, meat for human consumption, as imported, but a substance not intended for and unfit for such, containing a watery liquid for medicinal purposes.

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The remaining provision counted upon, paragraph 477, should also be quoted:

477. Drugs, such as barks, beans, berries, buds, bulbs, bulbous roots, excrescenses, fruits, flowers, dried fibers, dried insects, grains, gums, gum resin, herbs, leaves, lichens, mosses, logs, roots, stems, vegetables, seeds (aromatic, not garden seeds), seeds of morbid growth, weeds; any of the foregoing which are natural and uncompounded drugs and not edible and not specially provided for in this section, and are in a crude state, not advanced in value or condition by shredding, grinding, chipping, crushing, or any other process or treatment whatever beyond that essential to the proper packing of the drugs and the prevention of decay or deterioration pending manufacture: *Provided*, That no article containing alcohol shall be admitted free of duty under this paragraph.

While the terms of the similitude clause (par. 385) *ex vi termini* render it inapplicable to the free list, of which paragraph 477 is a member, yet the language of the latter expressly classes thereunder all "drugs, *such as*" those enumerated. There is, however, nothing in this record establishing, nor was was it seriously contended at the hearing, or is it in the briefs urged by appellants, that these importations are in *any* particular or particulars "such as" any one of the things specifically named in paragraph 477. Certainly the importations do not respond in fact to any one of those descriptions.

Paragraph 400, providing for antitoxins, vaccine virus, and all other serums derived from animals and used for therapeutic purposes, is also counted upon in the protest cited, but was not urged either by brief or oral argument, and there is no proof in the record identifying these importations with any one of those enumerations.

Wherefore, upon this record, the appellants must fail.

*Affirmed.*

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(T. D. 36806.)

*Appraisers' cost records.*

Records to be kept by appraising officers for ascertaining cost of handling packages and advances made by examiners.

TREASURY DEPARTMENT, *November 13, 1916*

*To appraisers of merchandise and others concerned:*

In order to determine the cost of handling packages and appraising merchandise in the several customs districts and to obtain a comparative record of the advance value work of examiners, the following additional records are prescribed to be kept at each appraising office beginning January 1, 1917: "Individual examiner's record of advances," customs Cat. No. 6321; "Recapitulation of advances," customs Cat. No. 6323; "Examiner's daily report," customs Cat. No. 6325; "Report to the department," customs Cat. No. 6327.

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Each examiner will make a daily report on Cat. No. 6325 of all advances made by him or by the importer.

The appraiser will keep a record on Cat. No. 6321 of all advances made by either the importer or appraiser, giving all the data indicated by the different headings, and summarize the information at the end of each six months on Cat. No. 6323.

On or before the 15th day of January and July of each year the appraiser or officer acting as such in each district will prepare and forward to the department a report on Cat. No. 6327, giving the data required under each heading.

*Customs Cat. No. 6321.*—Individual examiner's record showing the total number of invoices advanced each day and the record by entry numbers of reappraisement and re-reappraisement findings.

The number of invoices advanced by importer or appraiser should include all advanced invoices, whether or not appeals to reappraisement have been taken. The record of advances by importer and advances by appraiser that have been appealed to reappraisement or re-reappraisement should be recorded in the columns provided, and this record for the six months' period should end either June 30 or December 31. The number of daily advances should be recorded in the columns provided, but the record should end either May 1 or November 1, inclusive. Invoices advanced in value by the importer or appraiser occurring after these dates should not be recorded in that half-year period, but should be recorded in the next half-year period, the record half year for the total number of daily advances to be from May 2 to November 1, inclusive, and November 2 to May 1, inclusive. The reason for this is that 10 days are allowed for an appeal to reappraisement by the importer and 60 days by the collector of customs, and such invoices upon which an appeal can still be taken are not to be included, neither should such invoices be considered pending, but should be recorded in the next half-year period, as described above.

*Customs Cat. No. 6325.*—Examiner's daily report of advances should only be the total number of invoices separating those made by himself from those made by the importer at time of entry.

*Customs Cat. No. 6327.*—In reporting upon the number of examination packages received in appraisers' stores, packages received for warehousing or general order, when received in the same building as examination packages, are to be included.

Package cost is to be ascertained upon the basis of the number of packages received, without taking into consideration those on hand, either examined, awaiting delivery, or those on hand awaiting examination, as a certain amount of labor has been expended on these packages, and in many instances a certain amount of

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appraisement work has taken place on the invoices before the cases have been opened for examination.

In reporting the number of employees and their compensations under Schedules B, C, E, F, G, and H, nothing less than half days are to be taken into consideration, and no allowances are to be made for vacations or sick leave.

Collectors will report daily to the appraiser the appeals taken to reappraisement or re-reappraisement, according to the entry number, the merchandise, the importer, the examiner (by initials), and at seaboard ports the name of the vessel.

The monthly report to the department of the number of rate advances and the amount of money involved in additions to make market value by examiners or importers will be discontinued, beginning December 1, 1916.

(103224.) ANDREW J. PETERS, *Assistant Secretary.*

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## (T. D. 36807.)

*Drawback on embroidered silk fabrics.*

**Drawback allowed on embroidered silk fabrics manufactured or produced by the Parisian Chic Embroideries Co., of New York, N. Y., with the use of imported plain woven silk fabrics.**

TREASURY DEPARTMENT, *November 14, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on embroidered silk fabrics manufactured or produced by the Parisian Chic Embroideries Co., of New York, N. Y., with the use of imported plain woven silk fabrics cut to dimensions suitable for the production of ladies' waists.

A manufacturing record shall be kept in accordance with the sworn statement of the manufacturers, dated October 23, 1916, which is transmitted herewith for filing in your office, which shall show, in addition to the usual import data, in the case of each lot of embroidered silk fabrics manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the number of pieces of silk embroidered, and the quantity of imported plain woven silk fabric used. A sworn abstract from the manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantities of imported material used in the manufacture of the exported embroidered silk fabrics, as shown by the sworn abstract from the manufacturing record.

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Drawback may be allowed under these regulations on embroidered silk fabrics exported on and after August 23, 1916.

Respectfully, ANDREW J. PETERS,
(105426.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36808.)

*Drawback on spelter.*

T. D. 35805 of October 20, 1915, extended to cover spelter manufactured by the Tulsa Fuel & Manufacturing Co. in whole or in part from imported zinc ores.

TREASURY DEPARTMENT, *November 15, 1916.*

SIR: The department's regulations of October 20, 1915 (T. D. 35805), providing for drawback on spelter manufactured by the United States Smelting Co., in whole or in part with the use of imported zinc ores, are hereby extended to cover spelter manufactured by the Tulsa Fuel & Manufacturing Co. at its smelter located at Collinsville, Okla., in whole or in part from imported zinc ores.

The sworn statement of the manufacturers, dated October 5, 1916, and the supplemental statement of the same date are transmitted herewith.

Drawback may be allowed under these regulations on spelter exported on or after July 26, 1916.

Respectfully, WM. P. MALBURN,
(105352.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *St. Louis, Mo.*

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(T. D. 36809.)

*Drawback on powdered antimony, etc.*

Drawback on powdered antimony and on smoke-producing powder manufactured by the Nassau Smelting & Refining Works, of New York, N. Y., with the use of imported pig antimony.

TREASURY DEPARTMENT, *November 15, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on powdered antimony manufactured by the Nassau Smelting & Refining Works, of New York, N. Y., with the use of imported pig antimony, and on smoke-producing powder manufactured by the said company with the use of such powdered antimony in combination with powdered aluminum.

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A manufacturing record shall be kept, showing, in the case of each lot of powdered antimony or smoke-producing powder manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the kind of article produced, the quantity and identity of imported antimony used in the manufacture thereof, and the quantity of product resulting. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported pig antimony used in the manufacture of the exported product, as shown by the abstract from the manufacturing record.

The sworn statement of the manufacturers, dated October 24, 1916, is transmitted herewith.

Drawback may be allowed under these regulations on the products covered thereby exported on or after August 17, 1916.

Respectfully, WM. P. MALBURN,
(105724) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36810.)

*Drawback on alcohol.*

Drawback on alcohol manufactured by the Louisiana Distillery Co. (Ltd.), of New Orlenas, La., with the use of imported molasses exclusively or with a mixture of imported and domestic molasses.

TREASURY DEPARTMENT, *November 15, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on alcohol manufactured by the Louisiana Distillery Co. (Ltd.), of New Orleans, La., with the use of imported molasses exclusively or with a mixture of imported molasses and domestic molasses.

A manufacturing record shall be kept in the manner prescribed in the sworn statement of the manufacturers, dated September 30, 1916, which is transmitted herewith for filing in your office, and at the end of each monthly period of manufacture there shall be filed a certificate of manufacture and abstract from such manufacturing record, showing, for the period, the quantity, value, and identity of the imported molasses and the quantity of domestic molasses used, the quantities and values of alcohol and fusel oil obtained, and the quantity and value of waste resulting.

The quantity of imported material which may be taken as a basis for the allowance of drawback may equal the quantity used in the

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manufacture of the exported alcohol, less the quantity which the value of the waste will replace, the duties paid on such quantity of imported material to be distributed between the principal product (alcohol) and the by-product (fusel oil) according to their relative values, provided that the drawback distributed to the fusel oil shall not exceed the maximum allowance on by-products prescribed by the drawback law, as interpreted by T. D. 33809 of October 25, 1913.

Drawback may be allowed under these regulations on alcohol exported on and after August 18, 1916.

Respectfully, WM. P. MALBURN,
(105410-1.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New Orleans, La.*

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(T. D. 36811.)

*Plant quarantine act—Importation of cotton.*

Collectors to be governed by amendments 7 and 8 of the rules and regulations of the Department of Agriculture governing the importation of cotton.

TREASURY DEPARTMENT, *November 15, 1916.*

*To collectors and other officers of the customs:*

Your attention is invited to copies of amendments Nos. 7 and 8 of the rules and regulations of the Department of Agriculture governing the importation of cotton (T. D. 36168), which have been forwarded to you by mail, and by which you will be governed.

The Secretary of Agriculture advises the department that both of these amendments apply to articles specified therein which are not unladen on the dock prior to midnight of December 31, 1916.

(92655-19.) WM. P. MALBURN, *Assistant Secretary.*

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(T. D. 36812.)

*Drawback on alcohol.*

Drawback on alcohol manufactured by the International Distilling Co. (Ltd.), of New Orleans, La., with the use of imported molasses exclusively or with a mixture of imported and domestic molasses.

TREASURY DEPARTMENT, *November 15, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on alcohol manufactured by the International Distilling Co. (Ltd.), of New Orleans, La., with the use of imported molasses exclusively or with a mixture of imported molasses and domestic molasses.

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A manufacturing record shall be kept in the manner prescribed in the sworn statement of the manufacturers, dated October 13, 1916, which is transmitted herewith for filing in your office, and at the end of each monthly period of manufacture there shall be filed a certificate of manufacture and abstract from such manufacturing record, showing, for the period, the quantity, value, and identity of the imported molasses and the quantity of domestic molasses used, the quantities and values of alcohol and fusel oil obtained, and the quantity and value, if any, of the waste resulting.

The quantity of imported material which may be taken as a basis for the allowance of drawback may equal the quantity used in the manufacture of the exported alcohol, less the quantity which the value of the waste, if any, will replace, the duties paid on such quantity of imported material to be distributed between the principal product (alcohol) and the by-product (fusel oil) according to their relative values, provided that the drawback distributed to the fusel oil shall not exceed the maximum allowance on by-products prescribed by the drawback law, as interpreted by T. D. 33809 of October 25, 1913.

Drawback may be allowed under these regulations on alcohol exported on and after August 18, 1916.

Respectfully, BYRON R. NEWTON,
(105406.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New Orleans, La.*

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(T. D. 36813.)

*Drawback on alcohol.*

Drawback on alcohol manufactured by the Jefferson Distilling & Denaturing Co., of New Orleans, La., with the use of imported molasses exclusively, or from imported molasses and unfiltered sirup, or from a mixture of imported and domestic molasses and unfiltered sirup.

TREASURY DEPARTMENT, *November 16, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on alcohol manufactured by the Jefferson Distilling & Denaturing Co., of New Orleans, La., with the use of imported molasses exclusively, or from imported molasses and unfiltered sirup produced from imported raw Cuban sugar, or from a mixture of imported and domestic molasses and unfiltered sirup.

A manufacturing record shall be kept in the manner prescribed in the sworn statement of the manufacturers, dated October 27, 1916,

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which is transmitted herewith for filing in your office, and at the end of each monthly period of manufacture there shall be filed a certificate of manufacture and abstract from such manufacturing record, showing, for the period, the quantity, value, and identity of the imported molasses and unfiltered sirup and the quantity of domestic molasses or sirup used, the quantities and values of alcohol and fusel oil obtained, and the quantity and value of the waste resulting.

The quantity of imported molasses which may be taken as a basis for the allowance of drawback may equal the quantity used in the manufacture of the exported alcohol, less the quantity which the value of the waste will replace, the duties paid on such quantity of imported molasses to be distributed between the principal product (alcohol) and the by-product (fusel oil) according to their relative values, provided that the drawback distributed to the fusel oil shall not exceed the maximum allowance on by-products prescribed by the drawback law, as interpreted by T. D. 33809 of October 25, 1913.

Drawback may be allowed under these regulations on alcohol exported on and after April 28, 1916.

Respectfully, BYRON R. NEWTON,
(104876.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New Orleans, La.*

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(T. D. 36814.)

*Export bounty on sugar.*

No countervailing duty under paragraph E of section 4 of the tariff act of October 3, 1913, should be assessed on sugar from the Dutch West Indies or the Argentine Republic.—T. D. 26225 of April 1, 1905, and pertinent portion of T. D. 33182 of February 17, 1915, revoked.

TREASURY DEPARTMENT, *November 17, 1916.*

SIR: Referring to previous correspondence, I have to state that the department has been informed through the Department of State that no export bounties are paid on sugar exported from the Dutch West Indies or the Argentine Republic. Therefore, no countervailing duty under paragraph E of section 4 of the tariff act of October 3, 1913, should be assessed on sugar imported from those countries.

T. D. 26225 of April 1, 1905, and so much of T. D. 33182 of February 17, 1913, as refers to sugar from the Argentine Republic are hereby revoked.

Respectfully, BYRON R. NEWTON,
(67760.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36815.)

*Drawback on hosiery.*

**Drawback on hosiery manufactured by Lewis E. Taubel, of Norristown, Pa., with the use of imported cotton yarn.**

TREASURY DEPARTMENT, *November 18, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on hosiery manufactured by Lewis E. Taubel, of Norristown, Pa., with the use of imported cotton yarn and domestic yarn.

The allowance shall not exceed the quantity of imported cotton yarn appearing in the exported hosiery, as shown by the sworn statement of the manufacturer, dated November 6, 1916, which is transmitted herewith for filing in your office.

Supplemental sworn schedules covering other styles of hosiery manufactured by the applicant with the use of imported cotton yarn may be filed, and upon verification of the same drawback may be allowed on the hosiery covered thereby.

Drawback may be allowed under these regulations on hosiery exported on or after July 28, 1916.

Respectfully, ANDREW J. PETERS,
(95187-24.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36816.)

*Melba sauce.*

**Appeal directed from decision of the Board of United States General Appraisers, G. A. 7978 (T. D. 36766), involving the classification of Melba sauce.**

TREASURY DEPARTMENT, *November 21, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 3d instant, inviting attention to a decision of the Board of United States General Appraisers in the matter of protest 800648, G. A. 7978 (T. D. 36766), wherein certain so-called Melba sauce, which had been assessed for duty under paragraph 201 of the tariff act of October 3, 1913, for sauces of all kinds, was held to be dutiable under paragraph 217 of the said act for fruits of all kinds preserved or packed in sugar or having sugar added thereto or preserved or packed in molasses, spirits, or their own juices.

In accordance with your recommendation, you are hereby requested to file, in the name of the Secretary of the Treasury, an application

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with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(101503.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

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(T. D. 36817—G. A. 7987.)

*Boxes—American shooks.*

BOXES MADE FROM AMERICAN SHOOKS--PAPERS, NAILS, AND LABOR—DUTIABLE VALUE.

An importation of quarries was packed in boxes or crates made of American shooks, and the invoice contained separate items for "paper used in packing" and "nails and labor used in packing," which items were included in the invoice and entered value of the importation. The appraiser advanced the entered value, and on appeal to reappraisement the Board of General Appraisers found a *per se* value for the quarries per 1,000, and, as a part of its decision, stated, "add paper, nails, and labor." The direction to "add paper, nails, and labor" was gratuitous. The collector was bound to add them under the law, and his action in so doing is approved, because there is no evidence in the record to show that the paper, nails, and labor were used in converting the American shooks into the boxes in which the quarries were shipped.

United States General Appraisers, New York, November 13, 1916.

In the matter of protest 794999–6120 of Oberle & Henry against the assessment of duty by the collector of customs at the port of New Orleans.

[Affirmed.]

*Churchill, Marlow & Hines* for the importers.
*Bert Hanson*, Assistant Attorney General (*Robert Hardison*, special attorney), for the United States.

Before Board 3 (WAITE and HAY, General Appraisers).

WAITE, *General Appraiser:* The goods in question in this case are invoiced as "4,004 best red 6 x 6 quarries," 45 shillings per thousand, amounting to £9 2d., from which was deducted 5 per cent or 9s., leaving a balance of £8 11s. 2d. From an inspection of the invoice it is apparent also that the importers added "paper used in packing," 3s. per thousand, and "nails and labor used in packing," 8s. 5d. per thousand, making a total of £10 16s. 10d., from which is deducted by the importers "to make market value" £1 15s. 2d., leaving an invoice value of £9 1s. 8d. There is no explanation of the deduction other than what is found in the language above quoted. As it is not probable that deduction was made from the items of paper, nails, and labor, the only construction to be placed upon this language is that



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the deduction was from the *per se* value of the goods, which would make £6 16s. the entered value of the goods, as found by the collector.

There is written on the face of the invoice in red ink "Appraiser advances £1 15s. 2d., to make F market value by disallowing deduction on entry." The case was appealed to a single general appraiser, who returned "Appraised value affirmed." From this decision an appeal was taken to a board of general appraisers, who made a finding in the following words and figures: "4,004 quarries, 52/6 per 1,000, less 17/2½ per cent. Add paper, nails, and labor." We look upon the finding, so far as it directs the addition of paper, nails, and labor, as merely a gratuitous suggestion on the part of the board of general appraisers, as we think that under the rule in United States *v.* Spingarn (5 Ct. Cust. Appls., 2; T. D. 34002) the addition of such items and the amount thereof were matters entirely within the jurisdiction of the collector.

Upon the consumption entry found in the case liquidation evidently was made in red-ink figures, from which it appears that the entered value was taken to be £6 16s. We construe the return of the board of general appraisers as showing that the *per se* value of the goods contained in the invoice was £8 10s., this being the total value of 4,004 quarries at the appraised value of 52/6 per 1,000, less 17 per cent and 2½ per cent; it does not include any items of packing enumerated as paper, nails, and labor. The entered value of the goods themselves appears to have been found by the liquidating officer by deducting the amount stated on the invoice for paper, nails, and labor of £2 5s. 8d. from the amount of the invoice, £9 1s. 8d. The value found, then, by the board of general appraisers is greater than the entered value by £1 14s. The entered value in dollars would be $33.09. The increase would be $8.27, making a total of $41.36. We find also from the figures made on liquidation that duty has been assessed upon the value of the paper, nails, and labor (which value is $11), plus the $41, the value of the goods, to which has been added an "additional duty" of 24 per cent of the $41, the 24 per cent being the percentage of advance over the entered value, found by dividing said advance by the entered value, in other words, by dividing $8.27 by $33.09. In the liquidation, therefore, it appears that the return of the general appraisers is construed as a finding upon the *per se* value of the goods, to which has been added the items of paper, nails, and labor.

The protest is in the following language:

Duty should have been assessed on the merchandise in accordance with the decision of the Board of United States General Appraisers, file No. 77678, on re-reappraisement, to wit, 52/6 per thousand, less 17 per cent and 2½ per cent.

It is further claimed that the boxes containing the merchandise and which are made of American shooks are free of duty under paragraph 404. The regulations of the Treasury Department covering boxes made of American shooks have been complied with.

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It would seem, therefore, that the only question to be decided is whether certain of the items, to wit, paper, nails, and labor, should be held to be a part of the value of the boxes made of the American shooks in which the goods are imported. It is undoubtedly the law that boxes made of American shooks transported abroad and imported into this country, either full or empty, are free. See Kraemer & Co. *v.* United States (4 Ct. Cust. Appls., 91; T. D. 33369). What, then, is there in the case from which it can be determined that these items are free as a part of the boxes made out of the aforesaid shooks, as claimed by the importers? No testimony was taken in the case. We must find upon this point from the record as it appears in the papers filed. We think there is no question but that the Board of General Appraisers construed these items to be dutiable. Their finding, however, in a proceeding to reappraise would, in our judgment, be extra-official with reference to that subject. We find upon the invoice the following: "Paper used in packing, 3 shillings per thousand. Nails, 8d., and labor 7s. 9d., used in packing, totaling 8s. 5d. per thousand. Material used in packing, American shooks, no charge, 77 crates."

We think that if it had been shown that the material and labor were used in making up the shooks and putting them in condition to be filled with merchandise the charge therefor would be free. No explanation, however, has been given upon that point, and we think we are bound to recognize that in the ordinary course of handling goods of this kind labor, paper, and nails would be necessary. It is perfectly reasonable to believe that the tiles were done up in paper which was furnished where they were packed and that labor was necessary to place them in the crates or boxes. In fact it is admitted in the brief of the importers that the paper is a dutiable item. We conclude, therefore, from the foregoing that these items are dutiable, and were such items as the collector was required to add to the invoice in ascertaining the dutiable value of the goods. We conclude from his figures that he gave the correct construction to the finding of the board of general appraisers. The claim of the importers is therefore overruled.

The protest contains also an additional claim for 5 per cent reduction from the duties under section 4 of paragraph J of subsection 7. This claim is overruled as unsupported.

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(T. D. 36818—G. A. 7988.)

*Rock crystal—Earthy or mineral substance.*

1. Quartz rock, in its natural state possessing crystalline properties, when heated sufficiently to remove such properties is no longer rock crystal within the meaning of paragraph 98 of the tariff act of 1913.

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2. Paragraph 98, referring to "all articles composed wholly or in chief value of rock crystal," refers to rock crystal in the natural state in which the crystalline properties have not been removed.

3. Transparent, glass-like cylindrical tubes, about 2 inches in diameter, made from the product resulting from fusing or melting quartz rock with intense heat, whereby its crystalline property is destroyed or eliminated and the product thereby rendered proof against sudden and extreme changes of temperature, which is not the case with rock crystal in its natural state, do not come within the provision for rock crystal in paragraph 98, but are dutiable as articles composed wholly or in chief value of earthy or mineral substances not decorated in any manner at 20 per cent ad valorem under the provisions of paragraph 81 of the same act.

United States General Appraisers, New York, November 15, 1916.

In the matter of protests 786308, etc., of the R. U. V. Co. against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

*Thaddeus S. Sharretts* for the importers.

*Bert Hanson*, Assistant Attorney General (*Charles D. Lawrence* and *Charles O. Baese*, special attorneys), for the United States.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers).

Sullivan, *General Appraiser:* The merchandise is described on the invoice as "apparatus of fused silica." It was assessed for duty as a manufacture of rock crystal under paragraph 98 of the tariff act of 1913 at 45 per cent ad valorem. It is claimed, among other things, to be fused silica dutiable at 20 per cent under paragraph 81 as articles or wares composed wholly or in chief value of earthy or mineral substances, not decorated in any manner.

The merchandise consists of small cylinders or tubes manufactured under a patent process by the Silica Syndicate (Ltd.), of London, from quartz rock. The sample introduced in evidence consists of a cylindrical tube of transparent glass, about 2 inches in diameter, being the result of heating quartz rock to a very high temperature and by a certain process made into the form as imported.

The question at issue is whether or not this merchandise is rock crystal within the meaning of paragraph 98, or an earthy or mineral substance wholly or partly manufactured, or articles and wares composed wholly or in chief value of earthy or mineral substances not decorated in any manner, at 20 per cent advalorem under paragraph 81.

The statute under which the merchandise was held dutiable refers to marble, breccia, onyx, alabaster, and jet, wholly or partly manufactured into monuments, benches, vases, and other articles, or of which these substances or either of them is the component material of chief value.

The evidence does not warrant the conclusion that the merchandise under consideration comes within the foregoing distinct provisions of said paragraph 98. This same paragraph further enumerates—

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And all other articles composed wholly or in chief value of agate, *rock crystal*, or other semiprecious stones, except such as are cut into shapes and forms fitting them expressly for use in the construction of jewelry.

It is claimed by the Government that as the basic property of the merchandise under consideration is rock crystal, although not in its natural state, being fused by reason of heat and becoming another article, does not remove it from classification as rock crystal. On the contrary, the protestants contend that as this merchandise is not in its natural state, having been subjected to intense heat and advanced to another state, thereby losing its crystalline property, it is no longer rock crystal, but similar to flint rock or other earthy or mineral substance.

The chemist who testified for the importers was clear and emphatic that this merchandise as imported is not rock crystal. An analysis was made in which he found it, in aspect, to be a short, wide tube showing irregular striations, typical for a material which has been molten or softened by heat, the material also showing irregular air bubbles; and that in breaking the tube the break showed the typical irregular surfaces which will occur when breaking a glass-like material. Under physical examination he found the ultra violet rays to pass through the sample practically unimpeded, that heating did not produce any change on the sample no matter how quickly the temperature was raised, and that no change occurred when the material was plunged red-hot into cold water. By chemical analysis he found the material to consist practically of pure silicic acid. His conclusion upon the whole was that the material is practically pure silicic acid in a glass-like noncrystalline state, not found in nature in such state.

The chemist's oral testimony was practically along the same lines. He stated that scientifically the material in question is known as fused quartz, consisting practically of pure silicic acid in a fused state; that it differs from the ordinary rock crystal mainly in that it is not crystalline, while rock crystal is of course crystalline, as the name implies. When asked whether rock crystal that had been fused would differ in any respect from ordinary rock crystal, he stated:

It would differ most decidedly from the ordinary rock crystal, because it would have lost the characteristic which gives it the name; namely, it would have lost the crystalline characteristic.

He further stated that the main difference between rock crystal in a state of nature and rock crystal that had been fused would be that the former is crystalline, while the latter is not. He also stated that he could not from an analysis positively state that the merchandise under consideration is made from rock crystal or silica.

It appears that rock crystal in its natural state can not be subjected to extreme variations of temperature without disastrous re-

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sults to the article. In other words, an extremely high temperature would cause the article to crack, owing to its crystalline character. On the other hand, if the article has been fused the crystalline property is lost, its tensile strength is greatly increased, and it is no longer affected by extreme changes of temperature. This is quite clearly expressed by the same witness, who stated, in reply to the question as to why the article under consideration was not composed of rock crystal, as follows:

> Well, as I said before, I can only say this: I say as to the thing that is here that it is not composed of crystal. What happened before I can not say. It might—they might have taken quartz and melted it down; they might have taken rock crystal and melted it down. That I can not say. As to the thing that is there, it is surely not composed of any crystalline material.

This fact is furthermore sustained by all the testimony in the record. The advertising pamphlet of the Hanovia Chemical & Manufacturing Co., which was offered in evidence by the Government and marked "illustrative Exhibit B," describes in a succinct manner the effect of heat upon rock crystal. In referring to merchandise manufactured by this company from rock crystal, it says that it is prepared from the purest rock crystal, and that the manufacture is done with the utmost care and cleanliness, yielding a pure glass of uniform properties and characteristics which make it indispensable in every scientific laboratory. It further states that it would be strange indeed if this material did not find a widely extended application in industrial circles; that its melting point lies 800° C. (1,440° F.) higher than that of common glass; and that it may be subjected without misgiving to the greatest and most sudden temperature changes; that a glass vessel cracks when heated or cooled too rapidly, while objects made of fused rock crystal may be heated to incandescence in the blowpipe flame and plunged directly into cold water without the least injury; and that this very valuable property is the outcome of the extremely small coefficient of expansion.

From the above extract of the effect of heat on rock crystal there is but one conclusion—that the merchandise here in question is the result of the fusing of quartz or rock crystal by heat into its present condition. All the testimony indicates that a crystal subjected to heat loses its crystalline character. With such fact established the query then arises, Is such merchandise any longer the rock crystal of the statute?

The statute does not refer to the product of rock crystal or to any form of manufacture therefrom. It states "all articles composed wholly or in chief value of rock crystal." Can a thing be rock crystal when its principal characteristic is eliminated? It is the crystalline character that gives it name and value. In its crystalline form it is a semiprecious stone. If the crystalline properties were in

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the merchandise under discussion it could not be used as described by the Hanovia Chemical & Manufacturing Co. The removal of the crystalline quality increases its tensile strength so as to make it adaptable for use irrespective of temperature changes. It can not be denied that, having lost that which gave it a name, to wit, the crystal, it then becomes a mere rock, flint in character, and not subject to varying degrees of temperature to which the article may be subjected in use, and thus becomes in commerce and trade an article of great utility. It no longer possesses that which made it precious and especially suitable for certain purposes.

We are not aided by any authority directly in point. The board and the courts have referred in the past to rock crystal, but not in the manner and way the question is presented on this occasion. It seems to us, from a study of the case and the construction to be placed on the statute, that the classification of the collector is improper. Rock crystal is fully described in the works upon precious stones, but nowhere have we been able to find it designated as such when the crystalline character is removed.

In the testimony of the witness on the part of the protestants, with reference to the basic material and its removal, he stated as follows:

Q. The basic material may have been rock crystal, and by reason of the manipulation through which that rock crystal has passed you do not detect it now; is that the idea?—A. I could not detect that now; surely, no.

Q. But it may have been used as the basis of the material?—A. It may have been used as the basis of the material. Say, for instance, I see some charcoal. Somebody says, "That is bone charcoal." I don't know; I can not say that is bone charcoal. It may be some other. Whether it has been in the bone originally or not, I can not say.

Q. Char may be either vegetable or animal—you can not say?—A. I can not say. Sometimes, maybe tell from the shape it has taken, but, generally speaking, you can not tell. The main thing, what I can see here, it is not composed of rock crystal—what is typical for rock crystal. I might say this here: That I might take a piece of rock crystal—even take crystal—and cut out of that this kind of a tube; it could be done. But take that tube; put that in the apparatus such as the apparatus like the one where you use this here; that thing would be absolutely useless. It would be good for its transparency, but it would not stand the heat on the one side from the lamp and the cooling on the other side from the water; it would crack immediately. It would not stand that big drop of temperature from the lamp to the water; whilst this material stands it.

In our judgment this is the turning point of the issue in this case—that rock crystal could not be used for the purpose for which the merchandise at bar was manufactured. This was manufactured to withstand the highest degree of heat without cracking. If it was rock crystal it could not perform that function.

The same witness further testified:

Q. If, as you say, the analysis won't tell you whether the basic material used in the manufacture of this article is rock crystal, why do you say that there is no rock crystal in it?—A. Because I can say positively that there is no rock crystal in it because there is no appearance of the crystalline structure. If

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there is crystal in there, there would be a crystalline structure. What happens before—I can not state the history of the thing if I have not leave to see it. I can only state what the thing is to-day. What happens before, I can not state that. I can state that there is no crystal in this to-day. If there was crystal that thing would have one or all the phenomena which are typical to crystal. The most typical thing about this kind of crystal—the crystal from silicic acid—is that its different axes have different coefficients of expansion, whilst heating and quick cooling will break it.

Q. You have stated, I believe, that you did not know what effect 2,000 degrees of temperature would have on powdered rock crystal?—A. Except melting it.

Q. What effect would that have in destroying the crystals?—A. If it is molten, the moment it is molten the crystal is destroyed.

Without further elaborating or setting out the testimony, both the witnesses for the importers and the Government admit that this merchandise has gone through a molten state, and it is not disputed that such process destroyed the crystal therein. If the crystal is destroyed, it then is not rock crystal referred to in the statute, irrespective of whether it was originally rock crystal or not. That conclusion, it seems to us, is entirely sustained by this testimony. We must take this merchandise in its condition as imported, and, so doing, we unhesitatingly find that it is not rock crystal, but is an article composed wholly or in chief value of an earthy or mineral substance and not decorated in any manner, more properly dutiable under paragraph 81 of said tariff act at 20 per cent ad valorem.

The protests are sustained as to such claim, and the collector's decision is reversed.

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(T. D. 36819—G. A. 7989.)

*Quinine glycerophosphate—Application of highest-rate clause in paragraph 386.*

1. Quinine glycerophosphate is properly classified as a salt of cinchona bark under paragraph 584 of the free list, tariff act of 1913, rather than as a salt or compound of glycerophosphoric acid under paragraph 18.

2. The clause in paragraph 386 providing that "if two or more rates of duty shall be applicable to any imported article, it shall pay duty at the highest of such rates" does not apply where the intent of Congress based on a definite tariff policy can be determined without resorting to said provision.

United States General Appraisers, New York, November 17, 1916.

**In the matter of protests 790605, etc., of Merck & Co. against the assessment of duty by the collector of customs at the port of New York.**

[Reversed.]

*Comstock & Washburn* (*Henry J. Rode* of counsel) and *Charles A. Darius* for the importers.

*Bert Hanson*, Assistant Attorney General (*Charles D. Lawrence*, special attorney), for the United States.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers; concurring opinion by McClelland, G. A.)

Brown, *General Appraiser:* This suit was brought to determine whether quinine glycerophosphate should be classified under the pro-

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vision for "glycerophosphoric acid and salts and compounds thereof" contained in paragraph 18, act of 1913, at 25 per cent ad valorem, as contended by the Government, or under paragraph 584 of the free list, reading "quinia, sulphate of, and all alkaloids or salts of cinchona bark," as claimed by the importer.

The case was submitted upon the record made in protest 769181 of the same importers, wherein judgment was rendered for the protestants, G. A. 7895 (T. D. 36360), supplemented by the testimony of an experienced commercial chemist, who was familiar with the facts concerning the composition and manufacture of the article here in dispute.

While his testimony sets out in more detail the scientific facts concerning this merchandise, it does not modify or change in any way the general state of facts upon which the issue must be determined.

After oral argument upon the record thus made, the case was submitted for decision.

Prior to the incorporation in the act of 1913 of the provision under which classification is here made, quinine glycerophosphate was classified under the quinine provision of the act of 1909, paragraph 658, which was identical with paragraph 584 of the present act, while the other salts of glycerophosphoric acid were taxable under the general provision in paragraph 3, act of 1909, for chemical compounds, mixtures, and salts, at 25 per cent ad valorem.

Under the previous court rulings upon the quinine provision, the substance here involved is clearly a salt of cinchona bark under the commercial language there used (as distinguished from scientific or chemical language). United States *v.* Merck (168 Fed., 244; T. D. 29600). And it is also just as clearly a salt of glycerophosphoric acid.

It is apparent that these two provisions are equally specific in their terms. The Government counsel claims, however, that paragraph 18, being a new provision and the last expression of the legislative will, must be held to be inclusive of all the glycerophosphoric acid salts, and to have taken out of the free list the article here in controversy.

The Government further claims that, in any event, the portion of paragraph 386 which reads "if two or more rates of duty shall be applicable to any imported article, it shall pay duty at the highest of such rates," would require the classification to be affirmed.

With these contentions we can not agree. Since the act of March 3, 1883, every tariff act has contained provisions substantially identical with paragraph 584 of the free list of the act of 1913. This shows a long-established policy, based presumably on the very wide use of quinine salts as medicine, to exempt them from duty.

In the act of 1913 a reduction from 25 to 15 per cent was made in the general provision covering unenumerated chemical compounds,

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mixtures, and salts. Under this provision in the act of 1909 and previous tariff acts, salts of glycerophosphoric acid were classified, except this quinine salt which was covered by the quinine provision in the free list. The paragraph under which classification was made (par. 18), covering salts and compounds of glycerophosphoric acid, was added as a new provision of the act of 1913, manifestly to prevent the sodium, lithium, strontium, calcium, iron, and similar salts of glycerophosphoric acid from coming under the general reduction for chemical compounds, mixtures, and salts, to 15 per cent, and to continue the tax upon them at 25 per cent. That undoubtedly was the general purpose. Is it not reasonable to suppose, therefore, that in so doing, the Congress intended for the first time to take this salt out of the free list, when such intent would have no relation to the general purpose just stated, and to that extent would be a departure from the settled policy in relation to quinine?

We think, taking the whole legislative situation together, that Congress had no such purpose in mind, and did not intend to disturb the quinine policy, but only to include in paragraph 18 the other salts of glycerophosphoric acid not containing quinine.

In conclusion, we think that the clause in paragraph 386 is not applicable to this situation. If a congressional intent can be derived from the two provisions in issue, we have no right to resort to the so-called highest rate provision. That provision is only applicable when an article is equally covered by two paragraphs, and there is nothing in the context or legislative policy of the whole act from which a congressional intent can be found to bring it under the one or the other.

In the case at bar we have found that Congress did not intend to modify the policy of admitting quinine products free so as to exclude this article, and having reached this conclusion we have no right to resort to paragraph 386.

Presiding Judge Montgomery said, in the case of Woolworth *v.* United States (1 Ct. Cust. Appls., 120; T. D. 31119), in speaking of the identical provision in the act of 1909:

> This section should be resorted to only in a clear case. It is plainly the duty of the court, if there is any ambiguity in the provisions, to resolve the doubt in favor of the importer, and every known rule of construction will be resorted to to ascertain the legislative intent as between two provisions *before invoking the paragraph named.* (Italics ours.)

Judgment is therefore rendered in favor of the importer, sustaining the protest claiming free entry under paragraph 584.

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CONCURRING OPINION.

McCLELLAND, *General Appraiser:* I concur in the conclusion that the assessment of duty by the collector was erroneously made, and that the protest claims for free entry should be sustained.

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(T. D. 36820—G. A. 7990.)

*Cotton velvet traveling rugs—Rugs of cotton.*

The general provision in paragraph 257, tariff act of 1913, for plushes, pile fabrics, velvets, and velveteens and articles made therefrom has reference to a class of merchandise more particularly used as wearing apparel or for bodily covering, and it was evidently the intention of Congress to levy a higher rate of duty thereon than on "rugs of cotton" provided for in paragraph 302, which latter paragraph has reference to an entirely different class of merchandise. *Held*, therefore, that traveling rugs of cotton velvet or velveteen are properly dutiable under paragraph 257 as articles of cotton velvet at 40 per cent ad valorem, rather than under paragraph 302 as "rugs of cotton" at 20 per cent ad valorem.

United States General Appraisers, New York, November 17, 1916.

In the matter of protest 796659 of B. Altman & Co. against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

*Churchill, Marlow & Hines* for the importers.

*Bert Hanson*, Assistant Attorney General (*Charles O. Baese*, special attorney), for the United States.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers).

Sullivan, *General Appraiser:* This cause was submitted on the report of the appraiser, which reads as follows:

The merchandise consists of cigar lighters designed to be carried on or about the person, composed wholly or in chief value of metal, valued above 20 cents per dozen pieces. It was returned for duty at 60 per cent ad valorem, paragraph 356, act of 1913. * * * Also traveling rugs composed of cotton velvet, returned as articles of cotton velvet at 40 per cent ad valorem, paragraph 257.

The protest controverts this classification and claims that the cigar lighters are more properly dutiable at 20 or 50 per cent ad valorem under paragraph 167, or under numerous other paragraphs at lower rates of duty than that assessed. But as this board and the Court of Customs Appeals have already passed upon cigar lighters adversely to the claims of the protestants, we must overrule the protest as to such merchandise, which we accordingly do. Note G. A. 7810 (T. D. 35880), affirmed in Bischoff & Co. *v.* United States (7 Ct. Cust. Appls., —; T. D. 36458).

As to the traveling rugs composed of cotton velvet referred to in the appraiser's report, it is claimed by the importers that such merchandise is properly dutiable at 20 per cent ad valorem under either paragraph 302 or 303, or at 30 per cent ad valorem under paragraph 296, or at 30 or 35 per cent ad valorem under paragraph 258 of the same act. We are without testimony as to the nature of this merchandise, except as contained in the appraiser's report. That states the merchandise consists of "traveling rugs composed of cotton velvet." The invoice describes the merchandise as "cotton velvet

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traveling rugs." Upon this state of facts the question arises, Is the merchandise classifiable under said paragraph 257, reading:

257. Plushes, velvets, plush or velvet ribbons, velveteens, corduroys, and all pile fabrics, cut or uncut, whether or not the pile covers the entire surface; any of the foregoing composed wholly or in chief value of cotton * * *; and manufactures or articles in any form, * * * made or cut from plushes, velvets, veleteens, corduroys, or other pile fabrics composed of cotton or other vegetable fiber * * *.

Or under paragraph 302, reading:

302. Carpets and carpeting of wool or cotton, or composed in part of either of them, not specially provided for in this section, and on mats, matting, and rugs of cotton * * *.

It is contended by the protestants that the merchandise is rugs of cotton, and comes within the *eo nomine* provision of said paragraph 302. We must first ascertain the facts. Turning to the report of the appraiser, we find the merchandise described as "traveling rugs composed of cotton velvet." We therefore start with the fact established that the merchandise is composed of cotton velvet. Is such merchandise of the character referred to and described in paragraph 302 as cotton rugs or rugs of cotton?

It must be admitted that an article composed of cotton velvet is a different and more valuable article than one composed of cotton. Velvet, ordinarily, is a silk fabric, soft, with a short, smooth nap or cut pile. Cotton velvet or velveteen is also soft and smooth, of fine construction, and necessarily more valuable than a cotton rug referred to in paragraph 302. The very nature of its manufacture and placing it in the same category with plushes and velveteens indicate its nature and composition.

It is true that an *eo nomine* description will govern over a general description; but we have not such fact. A rug of cotton is not a traveling rug composed of cotton velvet. True, cotton may be the predominant factor in both articles, but, in the very nature of things, an article of velvet or cotton velveteen is a different article from a cotton rug. Therefore the sole fact that a rug is of cotton does not necessarily bring it within the provisions of paragraph 302.

Paragraph 257, under which the merchandise was assessed, refers to a superior class of merchandise, such as plushes, velvets, plush or velvet ribbons, velveteens, and all pile fabrics. It naturally follows that merchandise coming within the general description of a pile fabric, whether cut or uncut, or manufactures or articles in any form, made or cut from plushes, velvets, velveteens, corduroys, or other pile fabrics composed of cotton, shall pay duty at the rate of 40 per cent ad valorem.

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Paragraph 302 refers to an entirely different class of merchandise. It has reference to that class used as floor coverings, such as carpets and carpeting, whether of wool or cotton, and mats, matting, and rugs of cotton; while the merchandise enumerated in paragraph 257 refers to articles and materials of a higher grade and used more particularly for bodily covering. The two classes are obviously for two different uses. In discriminating in favor of carpets and carpeting and merchandise of like character, whether of wool or cotton, Congress no doubt considered that such class of merchandise should not pay as high a rate of duty as the finer and more valuable articles covered by said paragraph 257.

In Sargent Co. *v.* United States (4 Ct. Cust. Appls., 462; T. D. 33880) the Court of Customs Appeals had before it the question of porcelain and earthenware. It was found that porcelain is a more highly finished article than mere earthenware, and came more clearly within paragraph 94 of the tariff act of 1909 than under paragraph 92 as brown or gray earthenware or stoneware crucibles. That authority, it seems to us, is directly applicable to the case at bar. The cotton velvet traveling rug is a more delicate article and of finer material than the ordinary cotton rug for floor covering. It is used for a different purpose, and, according to the terms of the statute, pays a higher rate of duty. In our opinion, that fact assists materially in the determination of the issue.

In the case of *In re* Downing & Co., G. A. 7660 (T. D. 35047), the issue was whether cotton table covers, made from figured velvet woven on a loom using a Jacquard attachment, were more specifically provided for as articles made from velvets than as Jacquard figured upholstery goods, or as Jacquard figured manufactures of cotton; and it was held that the word "velvet" is a specific provision for a particular fabric, and that the provision for "articles" made therefrom is fully as specific as the provision for "velvet" itself. The board, in its opinion, stated:

> If the table covers in question had been made of plain velvet, without figure or design, the provisions of paragraph 257 would unquestionably be applicable, and we do not think that Congress intended that velvets ornamented with a Jacquard figure should pay a lower rate than the same class of goods undecorated, as they would if we were to hold such merchandise dutiable as Jacquard figured upholstery goods.

This same rule, we think, is applicable in construing the provisions of the law in this case. We do not think it was the thought or intention of Congress that cotton velvet traveling rugs should pay the same rate of duty as rugs of cotton or cotton rugs. If it was, it would be wholly unnecessary to enumerate both classes. Congress evidently intended to differentiate, and its language is clear with respect thereto. Although cotton is used in the manufacture of

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both articles it was not intended that the cotton velveteen rug should pay the same duty as a cotton rug. Cotton velvet is a different article from a cotton rug.

In the case of *In re* Shoemaker Co., G. A. 7751 (T. D. 35588), the board had under consideration rugs made by sewing plush, composed in chief value of the hair of the Angora goat, to a stiff jute backing, where the issue was whether the merchandise was dutiable under paragraph 309 of the tariff act of 1913 as articles made wholly or in chief value of plushes "made wholly or partly of the hair of the Angora goat," at 45 per cent ad valorem, or under the provision for carpets or carpeting under paragraphs 303 and 296 or 302. In that case it was the contention of the importers that the hair of the Angora goat is wool, and that by virtue of paragraph 303 the rug should have been assessed for duty under paragraph 296 or 302 at the rates therein imposed on carpets and carpeting. But the board held otherwise—namely, that the merchandise was more clearly dutiable under said paragraph 309 of said act.

With the fact established that the merchandise here under consideration is cotton velveteen traveling rugs, we hold without hesitation that it was properly assessed for duty under said paragraph 257 at 40 per cent ad valorem. The protest is accordingly overruled and the decision of the collector is affirmed in all respects.

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(T. D. 36821—G. A. 7991.)

*Roofing felt.*

The provision in paragraph 320, tariff act of 1913, for "roofing felt," being unrestricted by any qualifying language whatever, includes within its meaning dry as well as saturated roofing felts. There is no warrant in law for discriminating between dry and saturated roofing felts.

United States General Appraisers, New York, November 17, 1916.

**In the matter of protests 802776, etc., of P. McGettrick against the assessment of duty by the collector of customs at the port of St. Albans.**

[Reversed.]

*Searle & Waterhouse* (*W. E. Waterhouse* of counsel) for the importer.

*Bert Hanson*, Assistant Attorney General (*John J. Mulvaney*, special attorney), for the United States.

Before Board 2 (FISHER and SULLIVAN, General Appraisers).

FISCHER, *General Appraiser:* The merchandise in question is described on the various invoices covered by these protests as "roofing felt." Duty was levied thereon at the rate of 25 per cent ad valorem under the provision in paragraph 332 of the act of 1913 for "manufactures of paper or of which paper is the component material of chief value, not specially provided for." The importer makes the

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claim that said merchandise is properly dutiable at the rate of 5 per cent ad valorem under the *eo nomine* provision for "roofing felt" in paragraph 320 of said act.

This is the second time these protests have come before this board for decision. They were originally set for hearing at the port of Boston on June 28, 1916. Although duly notified of the time and place of hearing, the protestant then failed to appear either in person or by attorney, nor did he tender any proof in support of his alleged claim, other than was contained in the papers which were transmitted to the board by the collector. Therefore, in accordance with the rule of the board in such case made and provided, the protests were deemed to have been submitted upon the papers constituting the official record and were decided accordingly—a procedure duly approved by the United States Court of Customs Appeals in the case of Lange *v.* United States (3 Ct. Cust. Appls., 440; T. D. 33005).

In and by the said decision, which was dated August 4, 1916, and promulgated as G. A. 7954 (T. D. 36615), the board sustained the claim alleged under paragraph 320 upon the ground that the appraiser's advisory classification of the goods, as noted by him in writing upon the invoice, fully agreed with the contention of the importer. The Government, however, made timely application, which was duly granted by the board, for a rehearing of the issues involved; but at the new trial, which took place at the port of Boston on September 27, 1916, no evidence whatever was introduced in support of the collector's classification of the goods as manufactures of paper under paragraph 332, whereas the importer called two witnesses whose testimony we are satisfied fully substantiates the claim that the merchandise is "roofing felt" within the meaning of paragraph 320.

F. H. Hird, one of the witnesses, testified in part as follows:

Q. (By General Appraiser COOPER.) For what purpose is this merchandise used?—A. They make roofing felt of it.

Q. Are they commonly called roofing felt?—A. Yes, sir.

Q. Is that what it is?—A. That exactly; nothing else.

Q. (By Mr. MULVANEY.) How long, to your knowledge, has this been called roofing felt?—A. I never remember of its being called anything else, as far as my experience goes.

Q. (By Mr. WATERHOUSE.) This material as now imported is what you call the dry felt?—A. Yes, sir.

Q. Is it roofing felt from the time it first comes into existence as here imported?—A. We so regard it, and the trade does.

To the same effect is the evidence submitted by Maurice F. Whiting, the other witness, whose testimony in part reads as follows:

Q. (By Mr. WATERHOUSE.) Do you know for what purposes they were bought and used by your firm?—A. I do.

Q. What was it?—A. Roofing felt; for the manufacture of roofing felt.

Q. Do you know under what name this material is commonly purchased and sold in its condition as here imported?—A. As dry roofing felt.

Q. Is that a well-understood description in the trade?—A. In the trade; yes.

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Q. These invoices are all of them as roofing felt. Is that a common way for it to be designated in your purchases?—A. As roofing felt, or dry felt.

Q. What do you mean by dry felt?—A. I mean dry roofing felt.

Q. As distinguished from what?—A. As distinguished from saturated roofing felt.

Q. You have testified that these protested shipments shown or represented by the official samples here were bought by you for roofing purposes?—A. Yes.

Q. To your knowledge is that commodity used for any other purpose in commercial quantities?—A. No.

The Government having offered no proof to the contrary, and the provision in paragraph 320 for roofing felt being absolutely unrestricted by any qualifying language, there remains nothing for this board to do but to hold the present merchandise properly classifiable thereunder.

In his brief filed with the papers herein, counsel for the Government invites the attention of the board to the literal wording of the appraiser's notation written upon the invoices in advisorily classifying the merchandise as "roofing felt mfr. of paper n. s. p. f. 25% par. 332 T. D. 36137." The Government contends that the reference to the rate of duty and the paragraph, followed by the citation of the department's letter of instructions, sufficed to remove any possible ambiguity which might otherwise have attached to the wording of the advisory classification. In other words, that the appraiser's notation on the invoices clearly evidenced an intent on the part of that official to advisorily return the merchandise as a manufacture of paper under paragraph 332.

As we view it, if the literal wording of the notation has any significance at all, it means that from an examination of the merchandise the appraiser considered it to be roofing felt, but in view of the departmental instructions contained in T. D. 36137 felt constrained to return it as manufactures of paper. In so doing we are satisfied that the appraiser misunderstood the attitude of the department upon the subject. As pointed out in our original decision, the collectors were not instructed to classify roofing felt as paper; they were merely directed not to return as roofing felt so-called sheathing paper, which consists of dry and unsaturated felt paper and which is very similar to what is known in the trade as deadening felt. The latter, as indicated by the department, is employed for deadening sounds under carpets or floors, or after being saturated with tar or asphaltum is used as a roofing felt, but that it is not known under the latter designation until it has been so saturated.

However, the chief difficulty encountered in endeavoring to apply to the present importation the departmental instructions is that the uncontradicted testimony of the witnesses conclusively establishes the commercial designation of the goods as dry roofing felt, whereas the subject of the department's letter is unquestionably sheathing

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paper, so known to the trade, and employed for other than roofing purposes.

As shown by the proof herein, roofing felt is commercially dealt in and recognized as such in the dry as well as the saturated state, and to the former class belongs the present merchandise. Nor do we know of any reasons which would warrant us in discriminating between the two classes for tariff purposes. Surely the unrestricted provision for roofing felt in paragraph 320 furnishes no such authority.

The claim alleged under paragraph 320 is therefore sustained in each of the above protests, but in all other respects the protests are overruled.

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*Abstracts of decisions of the Board of General Appraisers.*

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*Board 1*—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

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BEFORE BOARD 2, NOVEMBER 13, 1916.

**No. 40380.**—Protest 793234 of S. V. Beck (Buffalo).

STEEL AXLES—SCRAP STEEL.—Steel engine axles classified at 10 per cent ad valorem under paragraph 121, tariff act of 1913, are claimed free of duty as scrap steel under paragraph 518.

Opinion by FISCHER, G. A. The proof offered fails to show that the axles in question are scrap steel fit only to be remanufactured, and the classification under paragraph 121 was affirmed.

**No. 40381.**—Protest 796594 of Morrison & Risman (Buffalo).

BOILER PLATES AND ENDS—SCRAP STEEL.—Merchandise invoiced as steel scrap and returned by the appraiser as boiler or other plate iron or steel, classified at 12 per cent ad valorem under paragraph 105, tariff act of 1913, is claimed entitled to free entry as scrap steel under paragraph 518.

Opinion by FISCHER, G. A. The merchandise was found to be the ends and plates of several boilers, but the importers have not established that the condition of the merchandise as imported is such as to render it fit only to be remanufactured. The classification under paragraph 105 was affirmed.

**No. 40382.**—Protests 784945, etc., of Roessler & Hasslacher Chemical Co. (New York).

SALTS OF ANTIMONY.—Merchandise classified as salts of antimony at 25 per cent ad valorem under paragraph 144, tariff act of 1913, is claimed dutiable at 15 per cent under paragraph 5.

Opinion by FISCHER, G. A. On the authority of Abstract 38660, affirmed in United States *v.* Innis (7 Ct. Cust. Appls., —; T. D. 36254) salts of antimony was held dutiable at 15 per cent under paragraph 5, as claimed.

**No. 40383.**—Protest 793870 of MacDonald & Sons (San Francisco).

STRAWBOARD.—Strawboard in widths from 25 to 44 inches, classified as paper not specially provided for at 25 per cent ad valorem under paragraph 332,



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tariff act of 1913, is claimed dutiable as common paper-box board at 5 per cent under paragraph 320.

Opinion by FISCHER, G. A. It was found that this strawboard is used exclusively as common paper-box board and it was held dutiable under paragraph 320, as claimed.

**No. 40384.**—Protests 708290, etc., of Mills, Duflot & Co. et al. (New York).

SILK HAIR NETS.—Silk hair nets classified at 70 per cent ad valorem under paragraph 350, tariff act of 1909, are claimed dutiable at 60 per cent under paragraph 402.

Opinion by HOWELL, G. A. Hair nets made on a machine other than the Lever or Gothrough machine were held dutiable under paragraph 402. United States *v.* Mills (5 Ct. Cust. Appls., 534; T. D. 35178) followed. Protests sustained in part.

**No. 40385.**—Protests 748676, etc., of American Trading Co. et al. (New York).

BAMBOO HATS.—Hats made of split bamboo, not trimmed or blocked, classified at 25 per cent ad valorem under paragraph 335, tariff act of 1913, are claimed dutiable as manufactures of wood at 15 per cent under paragraph 176.

Opinion by HOWELL, G. A. On the authority of Isler *v.* United States (7 Ct. Cust. Appls., —; T. D. 36503) the hats in question were held properly classified under paragraph 335.

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BEFORE BOARD 1, NOVEMBER 15, 1916.

**No. 40386.**—Protests 801600, etc., of A. Wittnauer Co. (New York).

WATCH BRACELETS—PLATED ARTICLES.—Merchandise invoiced as leather bracelets, consisting of watch bracelets composed of leather and silk with a buckle of gold or silver, classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, is claimed dutiable as manufactures of metal under paragraph 167.

Opinion by SULLIVAN, G. A. It was found that the merchandise consists of leather straps with some silk thereon and metal plated with gold or silver. The bracelets are to be worn around the wrist with a watch attached and are suitable only for such purposes. They were held dutiable as manufactures of metal plated with gold or silver at 50 per cent under paragraph 167.

**No. 40387.**—Protests 791313-57854, etc., of Sears, Roebuck & Co. (Chicago and Galveston).

SEWING MACHINES—NEEDLES—ARTISTS' COLORS—TOYS.—Merchandise classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, is claimed free of duty as sewing machines and parts thereof under paragraph 441 and dutiable as artists' colors at 20 per cent under paragraph 63.

Opinion by SULLIVAN, G. A. It was found that the sewing machines can be used in making small garments but are not for the amusement of children. They were therefore held not to be toys. The claim for free entry as sewing machines under paragraph 441 was sustained. Illfelder *v.* United States (1 Ct. Cust. Appls., 109; T. D. 31115) cited. Artists' colors were held dutiable at 20 per cent under paragraph 63. Illfelder *v.* United States (7 Ct. Cust. Appls., —; T. D. 36311) followed. Merchandise returned by the appraiser as needles for toy sewing machines, but not shipped with such machines, was held dutiable under paragraph 135. Protest overruled, that claim not having been made.

**No. 40388.**—Protest 805542 of Henry Heininger Co. (New York).

PYROXYLIN ARTICLES.—Booklets lithographically printed, composed of paper and pyroxylin, classified as manufactures of pyroxylin at 40 per cent ad

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valorem under paragraph 25, tariff act of 1913, are claimed dutiable at 15 per cent under paragraph 329.

Opinion by SULLIVAN, G. A. On the authority of G. A. 7917 (T. D. 36484) the booklets in question were held dutiable at 15 per cent under paragraph 329.

**No. 40389.**—Protests 782332, etc., of H. Herrman, Sternbach & Co. et al (New York).

MOHAIR DRESS GOODS.—Mohair dress goods classified as cloth in chief value of the hair of the Angora goat at 40 per cent ad valorem under paragraph 308, tariff act of 1913, is claimed dutiable as cloth in chief value of wool at 35 per cent under paragraph 288 or as wool dress goods under paragraph 290.

Opinion by BROWN, G. A. On the authority of Rosenberg *v.* United States (7 Ct. Cust. Appls., —; T. D. 36510) mohair dress goods was held properly classified under paragraph 308.

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BEFORE BOARD 2, NOVEMBER 15, 1916.

**No. 40390.**—Protest 801400-54347 of Sears, Roebuck & Co. (Chicago).

VIOLIN ROSIN IN UNUSUAL CONTAINERS.

FISCHER, *General Appraiser:* The merchandise consists of violin rosin imported in metal boxes or containers, the latter being specially constructed with two separate receptacles, one for rosin and the other for violin strings. No violin strings, however, were imported, the receptacle therefor in each of the boxes being empty. Duty was levied upon said merchandise at the rate of 20 per cent ad valorem under paragraph 167 of the act of 1913 as entireties composed in chief value of metal. It is claimed that said articles are properly dutiable at but 10 per cent ad valorem under the provision in paragraph 375 of said act for "violin rosin, in boxes or cases or otherwise."

As we read it, the latter provision is intended to cover violin rosin, whether imported separately or in boxes or cases or other coverings specially and solely designed as the usual containers of said rosin. We do not believe that the scope of said provision may be extended to also include boxes which contain other articles besides violin rosin or which have receptacles for containing other articles in addition to the rosin. The latter class of boxes may well be, as happens in the present case, equally the containers for violin strings as for violin rosin, or they may be constructed with a view to holding still further articles in addition to the rosin. To say the least, such boxes are unusual containers for holding rosin, and in our view of the law are not comprehended within the meaning of paragraph 375.

The protest must be, and hereby is, in all respects overruled, and the decision of the collector will stand.

**No. 40391.**—Protests 803154, etc., of North American Fruit Exchange (Boston).

LEGALITY OF REAPPRAISEMENT.—It is claimed in this case that the proceedings before the single general appraiser and the board were illegal and without warrant of law.

Opinion by FISCHER, G. A. Protests unsupported; overruled.

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BEFORE BOARD 3, NOVEMBER 15, 1916.

**No. 40392.**—Protests 786494, etc., of Roethlisberger & Co. et al. (New York).

WEIGHT OF CHEESE.—It is claimed here that an allowance should be made for shrinkage in the weight of cheese classified under paragraph 196, tariff act of 1913.

Opinion by WAITE, G. A. G. A. 7867 (T. D. 36195) followed as to weight of cheese. Protests sustained in part.

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BEFORE BOARD 1, NOVEMBER 17, 1916.

**No. 40393.—Protests 775006, etc., of Wm. B. Riley & Co. et al. (Philadelphia).**

LAP ROBES—STEAMER RUGS—BLANKETS.

Opinion by BROWN, G. A. This suit is brought to determine whether the merchandise (so-called lap robes and steamer rugs) is properly dutiable as manufactures of wool, at 35 per cent, under paragraph 288, act of 1913, as classified, or as blankets of wool, at 25 per cent, under paragraph 289, as claimed in the protests.

Two witnesses were called for the protestants and four by the Government. Their testimony is too indefinite and conflicting to prove any definite, uniform, and general commercial designation which would control the classification of this merchandise.

After a careful examination of the record we therefore find that the proof is insufficient to establish any commercial designation of the term "blankets," which would include these articles. They seem to be generally referred to, both in the trade and in common speech, as lap robes and steamer rugs.

The goods are not composed of the kind of material which is ordinarily used as a blanket on a bed, but they were evidently manufactured directly for use as lap robes or steamer rugs. Had they been admittedly bed-blanket material, which was afterwards transformed in use, with slight changes, into lap robes or steamer rugs, the principle stated in Abstract 36896 (T. D. 34920) might apply. But, as before stated, that is not the situation here.

The protestants having failed to prove a commercial designation including the merchandise, and holding, as we do, that these particular articles are not included in the common meaning of the term "blankets," judgment is rendered in favor of the Government, affirming the classification.

CONCURRING OPINION.

MCCLELLAND, *General Appraiser:* I concur in the conclusion that the collector's assessment of duty should be affirmed, and the protest therefore overruled.

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BEFORE BOARD 3, NOVEMBER 17, 1916.

**No. 40394.—Protest 779309 of A. E. Outerbridge & Co. (New York).**

MANDATE OF COURT—SHIP'S EQUIPMENT.

Opinion by HAY, G. A. This case was heretofore before the Board of United States General Appraisers and decided on August 5, 1915, in A. E. Outerbridge & Co.'s case, Abstract 38248. The case was then appealed to the United States Court of Customs Appeals, there heard, and the following remittitur forwarded by the court to this board:

UNITED STATES COURT OF CUSTOMS APPEALS.

At a session of said court continued and held at the city of Washington, pursuant to adjournment, on the 31st day of May, A. D. 1916.

* * * * * * *

*The United States, appellant,* v. *A. E. Outerbridge & Co., appellee. No. 1607.*

Said appeal having been brought on to be heard before the court, and due consideration having been had, it is—

*Ordered* that the decision of the Board of United States General Appraisers, in so far as it relates to the items of merchandise entering into the construction of a triple-expansion marine engine, be, and the same is hereby, reversed, and said merchandise is held to be dutiable at 15 per centum ad valorem as steam engines, under paragraph 165 of the tariff act of 1913. In all other respects said decision is hereby affirmed, and said appeal is remanded to said

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board with leave to either party to offer testimony before the board showing the items imported which constitute parts of the steam engine in order that the board may make such further order as to reliquidation as may carry into effect this judgment and for such further action as may be requisite in the premises.

* * * * * * *

(Signed) ROBERT M. MONTGOMERY,
*Presiding Judge.*

I, Arthur B. Shelton, clerk of the United States Court of Customs Appeals, do hereby certify that the above is a true and correct copy of the order made in the above-entitled case on the 31st day of May, A. D. 1916.

Witness my hand and the seal of this court this 6th day of July, A. D. 1916.

(Signed) ARTHUR B. SHELTON, *Clerk.*

The powers of the United States Court of Customs Appeals are quite definitely stated in subsection 29 of section 28, act of 1909, in the following words:

Said Court of Customs Appeals shall have power to review any decision or matter within its jurisdiction and may affirm, modify, or reverse the same and remand the case with such orders as may seem to it proper in the premises.

From the remittitur above quoted it is apparent that the court in this case modified the decision of the board. This was clearly within its power, and the order which it has made is one which we must assume seemed to it proper in the premises. In other words, it seemed to it necessary that there should be additional testimony in order that the conclusion reached by the court might be carried out. Paragraph 165 of the act of 1913, under which the court evidently determines that the merchandise in question should be assessed, provides, so far as it may be applicable to the case at bar, for steam engines. It is therefore assumable that the court determined that the parts in question were dutiable under this paragraph, provided they constituted a steam engine and modified the decision of the board by providing that they should so be held, in the event that there should be presented to the board testimony showing which items in the importation constitute parts of the steam engine.

The case was placed upon the October calendar of this board and came on regularly to be heard. The protestant was present by a member of the firm, and the United States was represented by an assistant to the Assistant Attorney General in charge of customs. An opportunity was there given to either party to offer testimony, but no testimony was offered on either side, both the Assistant Attorney General and the protestant submitting the case for decision upon the previous record. We think it fair to presume that the court was unable to tell from the record before it exactly what parts of the importation constituted a steam engine, hence the modification of the board's decision and the order remanding the case to the board for further action. The record that was before the court is the only record that is now before the board, hence we find ourselves unable to reach any conclusion relative to the case that would be in accordance with the court's decision.

To carry, therefore, the mandate of the court into a judgment or direction which would control the collector, it would seem to be necessary that this board should have before it further facts. The case must, therefore, be treated as if a new trial had been granted upon the evidence, and at the time the case was set for hearing no additional testimony was offered by either side. The conclusion of the board can in no way differ from its original conclusion. The board reached the conclusion in the original case that the commodities in question did not constitute a complete triple expansion engine, hence its decision. The court apparently was of a different opinion, but found that it was necessary that there should be additional testimony upon the fact as to what items under

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importation constituted a triple expansion engine. The court's decision, therefore, as we understand it, was that such items as were necessary to constitute a triple expansion engine should be made dutiable under paragraph 165, tariff act of 1913, and that such other items as were embraced within the importation should be admitted free, as held by the board. The court reversed the board as to such items as constituted the triple expansion engine and authorized the parties to introduce testimony as to what these items were, and affirmed the board in all other respects. The parties, upon being given an opportunity, having failed to offer testimony upon the subject, the original decision of the board must stand.

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## (T. D. 36822.)

### *Drawback on carbon brushes.*

T. D. 35115 of February 5, 1915, extended to cover carbon brushes manufactured by W. J. Jeandron, of New York, N. Y., with the use of imported carbon blocks.

TREASURY DEPARTMENT, *November 21, 1916.*

SIR: The department's regulations of February 5, 1915 (T. D. 35115), providing for drawback on carbon brushes manufactured by W. J. Jeandron, of New York, N. Y., with the use of imported carbons, etc., are hereby extended to cover such articles manufactured from imported carbon blocks or with the use of such imported carbon blocks in combination with imported copper cables.

A manufacturing record shall be kept, showing, in the case of each lot of carbon brushes manufactured from imported carbon blocks, the lot number and date of manufacture thereof, the number, dimensions, and identity of the imported carbon blocks used, the number and dimensions of carbon brushes produced therefrom, the quantity of valueless waste resulting, and the number and dimensions of pieces of carbon blocks remaining over which are suitable for use in the manufacture of other articles. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of block carbon appearing in the exported carbon brushes, plus an amount to compensate for valueless waste, as shown by the abstract from the manufacturing record.

The sworn statement of the manufacturer, dated October 17, 1916, is transmitted herewith.

Drawback may be allowed under these regulations on articles covered thereby exported on or after September 27, 1916.

Respectfully, ANDREW J. PETERS,
(103225.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36823.)

*Drawback on shrapnel shells.*

Drawback on shrapnel shells manufactured by the American Can Co., of New York, N. Y., with the use of imported lead and antimony.

TREASURY DEPARTMENT, *November 21, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on 3-inch and 5-inch shrapnel shells manufactured by the American Can Co., of New York, N. Y., with the use of imported pig lead, or lead produced from imported ores, and imported bar or pig antimony, and on such shrapnel shells manufactured with the use of bullets produced by Marks Lissburger & Son (Inc.), of Long Island City, N. Y., under T. D. 36203 of March 1, 1916.

Each lot of bullets manufactured by the American Can Co. shall be given a manufacturing lot number, and a record of the same shall be kept showing the lot number, date of manufacture, the quantity and identity of each kind of imported metal and the quantity of other metals used, and the quantity of bullets produced therefrom. Each lot of shrapnel shells shall also be given a lot number, and a record of the same shall be kept showing the lot number and date of manufacture thereof, the number of 3-inch shells and the number of 5-inch shells produced, and the quantity and lot number of the bullets appearing in each class of shells. Sworn abstracts from such manufacturing records shall be filed with the drawback claim.

The allowance shall not exceed the quantities of imported lead and antimony appearing in the exported shrapnel shells, as shown by the abstract from the manufacturing record, plus 1 per cent to compensate for melting loss in manufacture.

The sworn statement of the manufacturers, dated October 23, 1916, is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on shrapnel shells exported on or after December 7, 1915.

Respectfully, ANDREW J. PETERS,
(103766-9.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36824.)

*Drawback on springs.*

Drawback on steel freight-car buffer springs manufactured by the Pittsburgh Spring & Steel Co., of Pittsburgh, Pa., with the use of imported rectangular steel bands.

TREASURY DEPARTMENT, *November 21, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations

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(chapter 18 of the Customs Regulations of 1915) on steel freight-car buffer springs manufactured by the Pittsburgh Spring & Steel Co., of Pittsburgh, Pa., with the use of imported rectangular steel bands.

The allowance shall not exceed one imported rectangular steel band for each steel freight-car buffer spring exported.

The sworn statement of the manufacturers, dated October 18, 1916, is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on the articles covered thereby, exported on or after July 24, 1916.

Respectfully, ANDREW J. PETERS,
(105059.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

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(T. D. 36825.)

*Drawback on cigars.*

Drawback on cigars manufactured by the Standard Tobacco Co. (Inc.), of Richmond, Va., with the use of imported filler tobacco.

TREASURY DEPARTMENT, *November 21, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on "little" cigars designated as "Intermission" brand, manufactured by the Standard Tobacco Co. (Inc.), of Richmond, Va., with the use of imported filler tobacco in combination with domestic tobaccos.

A manufacturing record shall be kept, showing, in the case of each lot of cigars manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the number of cigars produced, and the quantity of imported tobacco appearing therein. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantity of imported tobacco appearing in the exported cigars, as shown by the abstract from the manufacturing record.

The sworn statement of the manufacturers, dated September 27, 1916, is transmitted herewith.

Drawback may be allowed under these regulations on cigars exported on or after July 20, 1916.

Respectfully, ANDREW J. PETERS,
(105328.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Norfolk, Va.*

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(T. D. 36826.)

*Drawback on cigarette booklets.*

Drawback allowed on cigarette booklets manufactured by the Strauch Co., A. Levy, proprietor, of New York, N. Y., with the use of imported cigarette paper.

TREASURY DEPARTMENT, *November 22, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on cigarette booklets manufactured by the Strauch Co., A. Levy, proprietor, of New York, N. Y., with the use of imported cigarette paper.

The allowance shall not exceed the quantity of imported paper appearing in the exported booklets, as shown by the sworn statement of the manufacturer, dated November 8, 1915, which is transmitted herewith for filing in your office. Supplemental sworn statements may be filed to cover new styles of booklets which may from time to time be required by foreign customers, and after verification thereof drawback may be allowed on such new-style booklets.

Drawback may be allowed under these regulations on cigarette booklets exported on and after July 3, 1916.

Respectfully, ANDREW J. PETERS,
(30991.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36827.)

*Drawback on cigarette tips.*

Drawback on cigarette tips in rolls and individual tips manufactured by the Boucher Cork & Machine Co., of New York, N. Y., with the use of cork paper, tissue paper, metal leaf, and straw sheets.—T. D. 34561 of June 18, 1914, T. D. 34878 of November 4, 1914, T. D. 35744 of October 4, 1915, and T. D. 36323 of April 19, 1916, revoked.

TREASURY DEPARTMENT, *November 24, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on cigarette tips in reels and individual tips manufactured by the Boucher Cork & Machine Co., of New York, N. Y., with the use of imported cork paper, tissue paper, metal leaf, straw sheets, and cork rolls.

A manufacturing record shall be kept, which will show, in addition to the usual import data, the lot number and date of manufacture of each lot of cigarette tips manufactured for exportation with

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benefit of drawback, the quantity, value, and dimensions of the imported cork paper, tissue paper, metal leaf, straw sheets, and cork rolls used, the number and dimensions of the cigarette tips produced, and the quantity and value of the waste resulting, if any. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantities of imported materials used in the manufacture of the cigarette tips exported, as shown by the abstract from the manufacturing record, the allowance to be reduced according to the quantity of imported material which the value of the waste will replace.

The sworn statement of the manufacturers, dated November 13, 1916, is transmitted herewith for filing in your office.

T. D. 34561 of June 18, 1914, T. D. 34878 of November 4, 1914, T. D. 35744 of October 4, 1915, and T. D. 36323 of April 19, 1916, are hereby revoked.

Respectfully, ANDREW J. PETERS,
(92087.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36828.)

*Common carrier.*

Approving new bond of the Geo. W. Bush & Sons Co. as a common carrier of dutiable merchandise and for the lading and unlading of bonded goods under the act of February 13, 1911.

TREASURY DEPARTMENT, *November 24, 1916.*

SIR: The department has received your letter of the 16th instant, transmitting a bond in duplicate of the Geo. W. Bush & Sons Co. as a common carrier for the transportation of dutiable merchandise and for the lading and unlading of bonded goods under the act approved February 13, 1911, said bond being in lieu of that of the corporation named approved January 11, 1908, copy of which is on file in the customs office at Wilmington, Del.

The new bond is approved and copy thereof is herewith inclosed to be placed upon the files of your office. The fact and date of the rebonding of the corporation should be noted on the copy of the bond on file in the customs office at Wilmington, Del., and which should be retained without cancellation to meet any liability which may have accrued thereunder.

Respectfully, ANDREW J. PETERS,
(47129.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

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(T. D. 36829.)

*Appraisements—Validity of.*

Appeal directed from decision of the Board of United States General Appraisers, Abstract 40248, involving the validity of an appraisement.

TREASURY DEPARTMENT, *November 24, 1916.*

SIR: Receipt is hereby acknowledged of your letter of the 16th instant, inviting attention to a decision of the Board of General Appraisers, reported as Abstract 40248, wherein the board held that the action of the appraiser in adding to make market value was illegal.

In accordance with your recommendation, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(105652.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

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(T. D. 36830.)

*Fish roe, preserved, not fit for food.*

Fish roe, preserved, not fit for food purposes, free of duty under paragraph 478, tariff act of 1913.

TREASURY DEPARTMENT, *November 24, 1916.*

SIR: The department duly received your letter of September 25, 1916, relative to a difference in practice in the classification of preserved fish roe not fit for food purposes.

At some ports it appears that such merchandise is passed free of duty under the provision of paragraph 478 of the tariff act of 1913, for eggs of fish, except fish roe, preserved for food purposes, but the opinion is expressed that the provision of paragraph 216 is more specific than that of paragraph 478 and that all preserved roe of fish should be classified at 30 per cent ad valorem.

The pertinent provision of paragraph 216 is "Caviar and other preserved roe of fish, 30 per cent ad valorem," while that of paragraph 478 of the free list reads "eggs of * * * fish * * * (except fish roe preserved for food purposes)."

The department is of the opinion that the two provisions should be construed together and that all fish eggs, except caviar and fish roe preserved for food purposes, are free of duty under paragraph 478, while the provision of paragraph 216 should be held to cover only the

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fish eggs included in the exception in paragraph 478—that is, fish roe of like character preserved for food purposes. This conclusion is supported also by the fact that the term "other preserved roe of fish" in paragraph 216 is associated with caviar, a well-recognized term for edible fish roe.

You will therefore pass fish roe, preserved, not fit for food purposes, free of duty under the provision in question of paragraph 478 of the tariff act of 1913.

Respectfully, ANDREW J. PETERS,
(84791.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

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(T. D. 36831.)

*Port of entry.*

Gladstone, Mich., abolished as a port of entry in customs collection district No. 38.

TREASURY DEPARTMENT, *November 25, 1916.*

*To collectors of customs and others concerned:*

The appended Executive order, dated November 21, 1916, abolishing Gladstone, Mich., as a port of entry in customs collection district No. 38, of which Detroit is the headquarters port, is published for the information of all persons concerned.

(90740-38.) ANDREW J. PETERS, *Assistant Secretary.*

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EXECUTIVE ORDER.

Pursuant to the provisions of the act of Congress approved August 1, 1914, making appropriations for the sundry civil expenses of the Government for the fiscal year ended June 30, 1915, the port of entry at Gladstone, Mich., located in customs collection district No. 38, of which Detroit is the headquarters port, is hereby abolished.

This order will be effective on and after December 1, 1916.

WOODROW WILSON.

THE WHITE HOUSE,
*21 November, 1916.*

[No. 2488.]

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(T. D. 36832.)

*Drawback on opium products.*

Drawback on powdered opium and granulated opium manufactured by the Mallinckrodt Chemical Works, of St. Louis, Mo., with the use of imported crude opium.

TREASURY DEPARTMENT, *November 25, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations

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(chapter 18 of the Customs Regulations of 1915) on powdered opium and granulated opium manufactured by the Mallinckrodt Chemical Works, of St. Louis, Mo., with the use of imported crude opium.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated September 16, 1916, transmitted herewith, showing, in the case of each lot of granulated opium and powdered opium manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity, identity, and morphia content of the imported crude opium used, the net weight thereof after drying, the quantities and values of granulated opium and powdered opium produced therefrom, and, in the case of each product, the quantity of opium and the quantity of neutral substance appearing therein. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The quantity of imported crude opium which may be taken as a basis for the allowance of drawback may equal the quantity used, the drawback accruing to be distributed between the two products according to their relative values.

Drawback may be allowed under these regulations on the products covered thereby exported on or after April 5, 1916.

Respectfully, ANDREW J. PETERS,
(99458.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *St. Louis, Mo.*

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(T. D. 36833.)

*Roofing felt, coated.*

So-called roofing felt, coated, in rolls, in chief value of mineral substances dutiable at the rate of 20 per cent ad valorem as articles composed in chief value of mineral substances, not decorated, under paragraph 81 of the tariff act of 1913.

TREASURY DEPARTMENT, *November 25, 1916.*

SIR: The department is in receipt of your letter of the 8th instant, relative to the classification of certain so-called felt roofing, coated, in rolls, as per sample submitted.

It appears that no importations have been received at your port, but similar merchandise has been classified at two other ports under paragraph 320 of the tariff act of 1913, as a roofing felt at 5 per cent ad valorem. It is proposed to change the classification to that of articles or wares composed in chief value of mineral substances, not decorated, dutiable at 20 per cent ad valorem under paragraph 81.

A report of the United States chemist, it appears, shows that the analysis of the merchandise is as follows: (1) A felt of miscel-

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laneous animal and vegetable fibers, 34 per cent; (2) mineral matter, 7 per cent; (3) bituminous matter, about 47 per cent; (4) saponifiable oils, about 12 per cent.

The provision for roofing felt of paragraph 320 is for "roofing felt * * * not coated," and as the merchandise under consideration is a felt coated with bituminous matter and saponifiable oil and mineral matter it is excluded therefrom.

As the component material of chief value of the merchandise appears to be bituminous matter and other mineral matter, the department concurs in the proposed change in classification of the merchandise to that of articles or wares composed in chief value of mineral substances, not decorated, dutiable at the rate of 20 per cent ad valorem under paragraph 81 of the tariff act of 1913.

You will be governed accordingly on merchandise of the character in question imported or withdrawn from warehouse 30 days after the date hereof.

Respectfully, ANDREW J. PETERS,
(104390.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36834.)

*Plant quarantine act—Admission of cotton.*

Amendment No. 9 to the regulations of the Department of Agriculture governing the importation of cotton, and amendment No. 3 to notice of quarantine No. 8, published for the information and guidance of officers of the customs and others concerned.

TREASURY DEPARTMENT, *November 27, 1916.*

*To officers of the customs and others concerned:*

The appended copies of amendment No. 9 to the rules and regulations governing the importation of cotton, which were referred to in T. D. 36168 of February 16, 1916, and amendment No. 3 to notice of quarantine No. 8, which notice was published in T. D. 33754 of June 23, 1913, are published for the information and guidance of officers of the customs and others concerned.

(92655–19.) ANDREW J. PETERS, *Assistant Secretary.*

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UNITED STATES DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY.
FEDERAL HORTICULTURAL BOARD.

AMENDMENT NO. 9 TO THE RULES AND REGULATIONS GOVERNING THE IMPORTATION OF COTTON INTO THE UNITED STATES.

Under authority conferred by the plant quarantine act of August 20, 1912 (37 Stat., 315), it is ordered that regulation 14 of the rules and regulations governing the importation of cotton into the United States, as revised and

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adopted January 25, 1916, effective February 1, 1916, be amended so as to read as follows:

*Regulation 14.—Imperial Valley in Lower California, Mexico, exempt from these regulations.*

The foregoing regulations shall not apply to cotton grown in and imported from the Imperial Valley, in the State of Lower California, in Mexico.

Done at Washington this 4th day of November, 1916.

Witness my hand and the seal of the United States Department of Agriculture.

[SEAL.] D. F. HOUSTON, *Secretary of Agriculture.*

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UNITED STATES DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY.
FEDERAL HORTICULTURAL BOARD.

AMENDMENT NO. 3 OF NOTICE OF QUARANTINE NO. 8.—PINK BOLL WORM OF COTTON.

Under authority conferred by the plant quarantine act of August 20, 1912 (37 Stat., 315), it is ordered that amendment No. 1, dated August 18, 1913, and amendment No. 2, dated June 17, 1914, of notice of quarantine No. 8 of May 28, 1913, which amendments permitted the importation of cotton seed (including seed cotton) and cottonseed hulls from the States of Nuevo Leon, Tamaulipas, Coahuila, Durango, and Chihuahua, Mexico, for manufacturing purposes, are hereby revoked. Hereafter, and until further notice, by virtue of section 7 of said act, said notice of quarantine No. 8 shall be in full force and effect, with respect to such importation from said States, and the importation, for all purposes, of cotton seed of all species and varieties and cottonseed hulls from all foreign localities and countries, excepting only the locality of the Imperial Valley, in the State of Lower California, in Mexico, is prohibited.

Done at Washington this 4th day of November, 1916.

Witness my hand and the seal of the United States Department of Agriculture.

[SEAL.] D. F. HOUSTON, *Secretary of Agriculture.*

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## (T. D. 36835.)

### *Scientific sapphire articles.*

**Scientific sapphire pallet and roller-pin stock articles dutiable at the rate of 20 per cent ad valorem as articles of earthy or mineral substances under paragraph 81, tariff act of 1913.**

TREASURY DEPARTMENT, *November 27, 1916.*

SIR: The department is in receipt of your letter of the 11th instant inclosing a copy of a communication from the appraiser at your port relative to the proposed change in the classification of so-called scientific sapphire pallet and roller-pin stock articles.

It appears that it has been the practice to classify such merchandise as nonenumerated manufactured articles dutiable at the rate of 15 per cent ad valorem under paragraph 385, tariff act of 1913,

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or as watch jewels dutiable at the rate of 10 per cent ad valorem under paragraph 161, and it is proposed to change the classification to that of articles of earthy or mineral substances dutiable at the rate of 20 per cent ad valorem under paragraph 81.

The articles are said to be intended for use as jewels in the manufacture of watches, but are not suitable for such use until they have been manipulated, indentated, or cut to size and polished. As the articles in their imported condition are not ready for use as watch jewels, they do not appear to be covered by the provision of paragraph 161 for jewels for use in the manufacture of watches. (Abstract 38949.)

The United States chemist's report shows that the scientific sapphires are composed of alumina, which is defined as an earth. The department therefore concurs in the proposed change in classification, and you will assess duty on merchandise of the character in question imported or withdrawn from warehouse 30 days after the date hereof at the rate of 20 per cent ad valorem as articles of earthy or mineral substances under paragraph 81 of the tariff act of 1913.

Respectfully, ANDREW J. PETERS,
(69186.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36836.)

*Drawback on nut meats.*

Drawback on whole nut meats and broken nut meats produced by W. Baker, of New York, N. Y., from imported edible nuts for the account of W. R. Grace & Co., of New York, N. Y.

TREASURY DEPARTMENT, *November 27, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on whole nut meats and broken nut meats produced by W. Baker, of New York, N. Y., from edible nuts (Brazil nuts) imported in the shell for the account of W. R. Grace & Co., of New York, N. Y.

A record shall be kept by W. Baker in the manner described in his sworn statement of November 4, 1916, transmitted herewith, showing, in the case of each lot of nuts shelled for the account of W. R. Grace & Co., the lot number thereof, quantity received, date of receipt, date of shelling, the quantity and value of each product obtained therefrom, and the quantity of worthless waste resulting. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

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The quantity of imported edible nuts which may be taken as a basis for the allowance of drawback may equal the quantity used, as shown by the abstract from the manufacturing record, the drawback accruing to be distributed between the two products according to their relative values.

Drawback may be allowed under these regulations on the products covered thereby exported on or after August 3, 1916.

The sworn statement of W. R. Grace & Co., dated November 4, 1916, is also transmitted herewith.

Drawback may be allowed under these regulations on the articles covered thereby produced for the account of W. R. Grace & Co. by other producers upon the filing and verification of sworn statements by such producers similar to that of W. Baker, agreeing to keep the records prescribed above.

Respectfully,
(102646-3.)
COLLECTOR OF CUSTOMS, *New York.*

ANDREW J. PETERS,
*Assistant Secretary.*

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(T. D. 36837—G. A. 7992.)

*Wool suitings—Flannels.*

Certain fabrics of wool used for outside clothing, which are clearly distinguishable in their characteristics and texture from those found to be flannels in G. A. 7772 (T. D. 35703) and Abstract 39393 of March 16, 1916, and where there is no commercial designation shown which would include them in the flannel class, are properly classified as manufactures of wool at 35 per cent under paragraph 288, act of 1913, and not as flannels at 25 or 30 per cent under paragraph 289.

United States General Appraisers, New York, November 20, 1916.

In the matter of protests 781598, etc., of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

*Crim & Wemple* (*William L. Wemple* of counsel) for the importers.

*Bert Hanson*, Assistant Attorney General (*Charles D. Lawrence*, special attorney), for the United States.

Before Board 1 (MCCLELLAND, SULLIVAN, and BROWN, General Appraisers; MCCLELLAND, G. A., concurring).

BROWN, *General Appraiser:* This suit involves the proper classification of certain woven fabrics of wool, such as are used for men's suits. The goods were classified by the collector as wool cloth or manufactures of wool at 35 per cent under paragraph 288, act of 1913, and are claimed to be dutiable as flannels at 25 or 30 per cent under paragraph 289.



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Mr. Jacob L. Jackson, for the importer, testified that he was engaged in the wholesale clothing business and purchased fabrics from which clothes are made (including woolens); that the goods in question were known and dealt in in the trade with which he was familiar as wool goods or fancy flannels, and that flannels were woolen goods with a certain soft finish.

Mr. Frederick M. Lane, for the Government, testified that he was engaged in the dry goods commission business, handling woolen goods, blankets, silks, velvets, etc.; that he came in contact with people buying flannels, but had not dealt in flannels for some years; that he dealt in goods similar to the samples of the merchandise in question for many years; that the goods in question were known in the trade as cassimeres and cheviots. He described a flannel as "a piece of goods made of wool, soft finish, usually light weight." When shown collective Exhibit 6 of protest 760817 (the record of which is incorporated herein) he stated they were flannels and that they differed in finish from the samples of the goods in controversy, which were not flannels.

Mr. Robert F. Francis, for the Government, a manufacturer of novelty woolens and blankets, testified that he dealt in flannels throughout the United States. He described a flannel as follows:

> In our trade a flannel is a woven men's wear suiting fabric consisting of carded soft stock, wholly or largely of wool, rather loosely woven and finished with considerable face, but otherwise sold practically in the texture in which it leaves the loom.

Further, that he could distinguish a flannel by handling it, and that the goods in Exhibit 1 (samples of the goods in question) were not flannels, but were worsteds; that they were firmer and harder than flannels, and were made of twisted yarns.

Mr. Louis Solomon, for the Government, manufacturer, importer, and dealer in woolens (including flannels), testified that the goods in Exhibit 1 were not within the trade understanding of flannels and that they were different in physical and structural characteristics.

Mr. C. J. Maas, for the Government, a dealer in woolen fabrics (including flannels), testified that the samples comprising Exhibit 1 were not flannels in the trade; that they did not possess the physical characteristics of flannels, namely, the "handle," the "soft texture."

In G. A. 7772 (T. D. 35703), covering protests 759566, etc. (the record in which is incorporated herein), we said:

> The importer put on the stand a number of fully qualified witnesses, who defined the term "flannel" as a fabric composed of wool or cotton and wool, or wool and silk, woven in a certain way and having a certain finish, used for

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skirts and underwear, dressing sacks, and possibly for infant's wear, including also pajamas and trousers. They all testified that the term covered the material here in question, and that it was universally so recognized in the trade.

In Abstract 39393, March 16, 1916, covering protests 760817, etc. (the record in which was also incorporated herein), we said:

Samples of the various items claimed on were submitted in evidence and testimony introduced showing that they were similar to and of the same general character and construction as the samples in protests 759566, etc., the record in the latter case being incorporated herein. The testimony further shows that the merchandise consists principally of shirting flannels and is used for waists, shirts, and infants' wear.

The testimony for the importer in the case at bar is clearly insufficient to show that the goods are of the same dutiable character as those in the two previous cases above referred to. In fact, the record (including the samples in all three cases) shows that the merchandise in question is of quite a different character.

While the witness for the importer testified the goods were known in the trade as "fancy flannels," the four witnesses for the Government all testified the goods were not known as flannels in the trade. Of course, no controlling commercial designation can be found on such conflicting testimony.

On this consolidated record, we can see no reason for extending the meaning of the term "flannels," as construed in the decisions above mentioned, so as to include the goods in controversy. In fact, the whole record seems to confirm our previous findings and conclusions on this issue.

We therefore find that the particular merchandise in dispute is not flannels, and judgment is rendered for the Government, affirming the classification made by the collector.

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CONCURRING OPINION.

McCLELLAND, *General Appraiser:* I concur in the conclusion that the collector's assessment of duty should be affirmed and the protests therefore overruled.

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(T. D. 36838—G. A. 7993.)

*Card clothing with metal end plates and metal clips attached.*

Strips or pieces of card clothing with metal end plates and metal clips permanently attached thereto are properly classifiable as manufactures of metal not specially provided for under paragraph 167 of the act of 1913, as claimed by the importers, rather than dutiable under the provisions of paragraph 124

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of said act for "card clothing," as classified by the collector.—G. A. 3721 (T. D. 17735) cited and followed.

United States General Appraisers, New York, November 22, 1916.

In the matter of protests 790165, etc., of Leigh & Butler against the assessment of duty by the collector of customs at the port of Boston.

[Reversed.]

*Comstock & Washburn* and *Carroll E. Pillsbury* (*J. Frederick Lockett* of counsel) for the importers.

*Bert Hanson*, Assistant Attorney General (*Frank P. Wilson*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

FISCHER, *General Appraiser:* These protests cover certain strips or pieces of card clothing which have metal end plates and metal clips permanently attached thereto. Duty was levied thereon at the rate of 35 per cent ad valorem under the following provision in paragraph 124 of the act of 1913:

124. Card clothing not actually and permanently fitted to and attached to carding machines or to parts thereof at the time of importation, * * * when manufactured with tempered round steel wire, or with plated wire or other than round iron or steel wire, or with felt face, or wool face, or rubber face cloth containing wool * * *.

The importers claim that said articles are properly dutiable at the rate of 20 per cent ad valorem under paragraph 167 of said act as manufactures of metal not specially provided for.

In his report, which forms part of the record herein, the local appraiser states:

Concerning one of the claims of the importers, that merchandise is a manufacture in chief value of metal, attention is called to the fact that the components consist of cotton, wool, some adhesive material, wire, and steel, and while it may be claimed that the wire and steel components form a considerable part of the card clothing, it is improper, following T. D. 34943, to group *all* the components which are in their character metal, when any of them are separately provided for by name.

The decision just cited was rendered by the United States Court of Customs Appeals in United States *v.* Wolff (5 Ct. Cust. Appls., 418; T. D. 34943), a case which involved the question of the tariff classification of certain small pear-shaped and colored electric-light bulbs used as Christmas-tree decorations.

For duty purposes, the collector classified said bulbs under the provision in paragraph 438 of the act of 1909 for "artificial * * * fruits * * * of whatever material composed," but the board sustained the contention of the importers that they were properly dutiable under paragraph 199 of the latter act as manufactures composed in chief value of metal. The Government appealed from this ruling

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of the board, contending that, while the aggregate metal contents of the bulbs undoubtedly constituted metal the component of chief value, such conclusion would not be true with reference to any single metal in the article, and that only one of the several kinds of metals found in the article should properly be considered in ascertaining the component of chief value therein. In affirming the decision of the board, the court held that the provision for "manufactures of metal refers to the material and includes all the component classes of such by whatever distinctive name they may be known," citing as an authority for its conclusion the decision of the Supreme Court in United States *v.* Klumpp (169 U. S., 209) wherein "worsted goods" were held to be covered by the provision for "manufactures of wool." It will therefore be observed that the appraiser's conception of the effect of the decision in United States *v.* Wolff, *supra*, is based upon an erroneous understanding of the court's ruling in that case.

The importers contend herein that the present merchandise is expressly excluded from paragraph 124 for two reasons: First, that it is not card clothing within the congressional meaning of the term, as that meaning has been judicially interpreted and subsequently approved by legislative reenactment; second, that the metal end plates and the metal clips which were permanently attached to the strips of card clothing as imported are parts of the carding engines rather than parts of card clothing.

In support of their protest the importers rely upon the ruling of this board, G. A. 3721 (T. D. 17735), made in a case which arose under the tariff act of 1894, and which involved merchandise precisely similar in character to that here under consideration. There, the importers alleged that the merchandise consisted of card clothing, but the board overruled said claim and held the articles to be properly classifiable as manufactures of metal, basing its decision upon the following description of the merchandise:

> That the same consists of strips of tempered steel wire card clothing about 1 inch in width, about 40 inches long, combined with steel or iron clips, by means of which the card clothing is secured to the flats of a cotton carding engine. This combination is something more than mere card clothing; metal is the component of chief value therein, and it is a manufactured article.

Now, notwithstanding this ruling was consistently and uniformly followed by classifying officers generally during the remaining period of the act of 1894, as well as throughout the lifetime of each of the two succeeding tariff acts (1897 and 1909), and that Congress had not in the meantime, nor even in the present act, indicated, or in the remotest degree signified its intention to alter the long-continued and definitely established departmental practice with respect to the tariff status of said merchandise, nevertheless the Government in the

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case at bar for the first time in 20 years seeks to bring about a change in the tariff classification of said articles.

For such proposed change we can find no warrant either in the letter of the law or in the reports of the hearings had before the members of the Ways and Means Committee who framed the act. Indeed, the congressional purpose to make no change in the then prevailing practice with respect to the tariff status of this particular class of merchandise may be fairly gleaned from the following discussion of the subject reported in Volume II, page 1296, Tariff Hearings, Committee on Ways and Means, Sixty-second Congress, third session:

Mr. PALMER. All card clothing, then, comes under section 145?

Mr. HAMILTON. Yes, sir.

Mr. PALMER. And what you want to do is to have the present classification continued and the present tariff continued?

Mr. HAMILTON. Yes, sir; that is correct.

It is significant that the language of paragraph 145 of the act of 1909 was actually and literally reenacted in the present paragraph 124, with the exception that in the latter the duties imposed are to be calculated upon an ad valorem instead of a specific basis.

Considering, therefore, the attitude of Congress with regard to this merchandise, we have no hesitancy in asserting that we know of no case to which the doctrine of *stare decisis* and the rule that Congress is presumed to legislate in accordance with judicial rulings have greater force and should absolutely govern in the decision than in the case at bar.

If there is one proposition thoroughly settled in the construction of customs law it is that the language employed by Congress is presumed to have been used in accordance with the construction which has been given to it by long-continued practice of an administrative department or by a court. Shallus *v.* United States (1 Ct. Cust. Appls., 556; T. D. 31552, and cases cited); United States *v.* Meyer (1 Ct. Cust. Appls., 257; T. D. 31301); Kamada *v.* United States (215 U. S., 392); Salomon *v.* United States (2 Ct. Cust. Appls., 92; T. D. 31635).

Inasmuch, therefore, as it is now definitely settled law that strips of card clothing with metal ends and clips attached thereto do not constitute nor are they included within the meaning of the term "card clothing," as contemplated by the statute, we follow the previous ruling of this board in G. A. 3721, *supra*, and hold the present merchandise to be properly dutiable under paragraph 167 of the present act as manufactures of metal not specially provided for. We accordingly sustain that claim in each of the protests and overrule all others.

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(T. D. 36839—G. A. 7994.)

*Nonrefillable bottles.*

NONREFILLABLE BOTTLES.

Whisky bottles, having permanently attached to their necks a device made of earthenware, cork, and metal, which prevents their being refilled, do not come within the rule laid down in Hayes *v.* United States (150 Fed., 63; T. D. 27806), but are dutiable as entireties. Accordingly, the collector's assessment in this case under paragraph 83, tariff act of 1913, is correct.

United States General Appraisers, New York, November 24, 1916.

In the matter of protest 803022 of Acker, Merrall & Condit Co. against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

*Masters & Levett* (*Benjamin A. Levett* of counsel) for the importers.

*Bert Hanson*, Assistant Attorney General (*John J. Mulvaney*, special attorney), for the United States.

Before Board 3 (WAITE and HAY, General Appraisers).

HAY, *General Appraiser:* This is a protest against the action of the collector in assessing duty upon certain whisky bottles under the provisions of paragraph 83, tariff act of 1913, including a certain device permanently attached to the neck of the bottle, as a part of the bottle, and treating the same as an entirety. The protestant claims that the device in question should be treated as if it were nothing but a stopper to the bottle, and, under the rule laid down in Hayes *v.* United States (150 Fed., 63; T. D. 27806), should be admitted free of duty, the commodity contained in the bottle bearing a specific duty. While this device serves the purpose of a stopper and is so adjusted that upon tipping the bottle the contents can be poured out, its principal function is to prevent anything from being poured into the bottle. It is called a nonrefillable device, is made of cork, earthenware, and metal, and becomes a definite part of the bottle itself, the bottle and the device being made so that the latter fits the former. There is no ordinary stopper in the bottle. The device is so constructed that a thin layer of cork, approximately one-eighth of an inch thick, with a hole about one-fourth of an inch in diameter in the center, is placed immediately over the top of the bottle. This piece of cork is held in place by means of an ingenious earthenware device which fits upon the cork and is in turn held to the bottle by means of soft metal which surrounds it, the whole being so adjusted that the contents of the bottle may be readily poured out, but, when the bottle is placed upright on its base, all evaporation and leakage is stopped. This is accomplished by means of a small piece of earthenware, inclosed in the earthenware device which, when the bottle is upright, settles over the orifice in the cork, and, when the bottle is tilted, falls away from the cork into a chamber within the earthen-

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ware device, and allows the whisky to flow around it. This device renders it impossible to pour anything into the bottle. It apparently performs a different function from the ordinary stopper of a bottle.

Fitted into the orifice at the upper end of the earthenware device is a small cork about the size of a lead pencil and approximately three-eighths of an inch long. This is all that is removed to pour out the whisky. It is quite evident that this small cork forms a negligible part of the cost of the device.

The device, therefore, with the exception of this small cork, is never removed from the bottle; in fact, it could not be removed except by at least partially destroying it.

These facts seem to differentiate the bottles in question from those which were the subject of the decision in the case of Hayes *v.* United States, *supra.* The crux of that decision, as we understand it, was that the corks and wire, etc., were essential to the shipping of the commodity contained in the bottle, and necessarily a part of the cost of packing it ready for shipment. In the case before us the only thing that serves that necessary purpose is the small cork, negligible in value. While the device above described is so planned that through it the whisky can be poured, its chief use is to prevent anything being poured into the bottle.

The testimony in the case is very meager, but the conclusions above reached seem to us entirely warranted by it and an examination of the bottle which was introduced as an exhibit in the case. We conclude that the bottles and the device are an entirety and were properly so treated by the collector. The protest is therefore overruled.

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(T. D. 36840—G. A. 7995.)

*Weight of cheese in brine.*

In determining the dutiable value of importations of cheese in brine, assessable at 20 per cent ad valorem under paragraph 196, tariff act of 1913, the unit invoice value of which was approved by the appraiser, it is proper to accept as the basis of liquidation the net weight shown by the report of the Government weigher, even though this may be less than the invoice net weight. The shrinkage in the weight of the cheese is accompanied by a deterioration and not an increase in value.

United States General Appraisers, New York, November 24, 1916.

In the matter of protests 794623, etc., of N. S. Monachos *et al.* against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

*Hatch & Clute* (*Walter F. Welch* of counsel) and *Strauss & Hedges* (*Jacob L. Klingaman* of counsel) for the importers.

*Bert Hanson,* Assistant Attorney General (*Robert Hardison,* special attorney), for the United States.

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Before Board 3 (WAITE and HAY, General Appraisers).

WAITE, *General Appraiser:* On importations of cheese from Greece, the appraiser approved the entered unit value of the cheese, and the weigher reported an amount of cheese less than that found in the invoice. This is explained by the weigher having found a tare, consisting of brine, in excess of the invoice tare. The invoice contains the gross weight, the amount of tare, and the net weight. The gross weight appears to have been corroborated by the weigher for the Government, but, having found more tare, his net weight is less than the invoice net weight. The collector appears to have added this difference in tare, which is brine, to the weight of the cheese, and has assessed duty thereon as though it were cheese. As to the method of procedure the collector reports as follows:

Upon a reference to the United States weigher that officer reports that his increased tare in his opinion is due to certain liquid material—water or brine—that was weighed and paid for as cheese, but sweated or worked out during the voyage of importation.

Accordingly, this office arrived at the dutiable value of the cheese by adding to the United States weigher's returned net weight the amount of such liquid material—brine or water—that was invoiced as cheese, and assessed duty thereon at 20 per cent under paragraph 196.

In other words, this office holds that under the provisions of paragraph I of section 3 of the tariff duty should not be assessed upon less than the entered value; that it is necessary to consider the importation as an entirety, and as the entered value included part cheese and a certain amount of liquid material, invoiced and extended as cheese, it would not be proper to eliminate said liquid material in the assessment of duty.

The material part of the protest is in the following language:

We claim duty should have been computed on the basis of the amount of cheese actually imported, as shown by the United States weigher's return, no advance having been made in the unit of value declared on entry by the United States appraiser.

The only question, then, is whether this brine should be considered cheese upon which duty should be paid at the rate provided by the statute for cheese.

The Government introduced in evidence a very intelligent and enlightening report by Consul Alexander W. Weddell, the American consul general at Athens, Greece. From this report and the testimony given in the case we learn that this cheese is really a curd of goat's or sheep's milk, and is fit for consumption and exportation within about four days after it is made. The process is to curdle the milk, and, after decanting as much of the whey as possible, to place the curd in a bag or sack which is twisted at the end and hung up, and the free whey, so far as it may, is allowed to drip therefrom, after which the cheese is cut into chunks, salted, and placed in bar-

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rels, when a further amount of brine exudes therefrom, the quantity depending upon the temperature and length of time the cheese is allowed to stand. When placed in cold storage it will absorb considerable of the brine which has exuded, and when taken out and opened it is frequently necessary to add brine in order to keep the cheese from being too dry. The testimony of the importer is that it is sold in this country on actual weight at the time of the sale of the cheese; and when it is purchased in Greece, before it has aged at all, allowance is sometimes made for the amount of brine.

We do not think the brine should be considered as cheese. The amount found in the cheese is variable. It is impossible to determine how much it varies in different shipments of cheese. The statement of the consul general is that in proportion as the cheese becomes dry it deteriorates rather than increases in value. This is not like a case where a commodity (green hides or sugar, for example) by drying out in transportation has become enhanced in value per unit, in which case it may be proper to add to the value sufficient to bring it up to the market value of the article in that condition when sold in the market of a foreign country. That, however, is not this case. The entered value here was approved by the appraiser. The cheese must be kept moist; when it becomes dry it is of less value per unit, or as a whole, than it was when shipped. We therefore see no excuse for adding to the quantity of cheese actually imported a quantity of brine found in the barrels on landing. We are of the opinion that duty should have been assessed upon the landed weight of the cheese as reported by the Government weigher, not considering the brine. Note to the same effect the case of Coroneos Bros., G. A. 7866 (T. D. 36194).

The record in protest 794623, etc., has been incorporated in the record in protest 794678, and the latter protest submitted upon that record and the testimony of the importer. It appears from this testimony that the protest covers two items of cheese in brine, one for 20 barrels and the other for 10 cases of 2 tins each. The return of the Government weigher does not show the net weight of the cheese in the latter item, and the testimony of the importer was introduced to establish the weight. He states the net weight of the cheese in tins varies from 28 to 32 pounds per item. On the basis of 32 pounds per tin, the total net weight for the 20 tins of cheese covered by this item would be 640 pounds. The collector is therefore instructed to accept this as the dutiable weight of this item.

The claim of the importers is sustained and reliquidation will be made in accordance with this decision. In all other respects the protests are overruled.

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*Abstracts of decisions of the Board of General Appraisers.*

*Board 1*—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

BEFORE BOARD 3, NOVEMBER 20, 1916.

**No. 40395.**—Protest 796538 of K. Beetar (New York).

ROSARIES.—Rosaries classified at 60 per cent ad valorum under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of metal under paragraph 167.

Opinion by HAY, G. A. On the authority of United States *v.* American Bead Co. (7 Ct. Cust. Appls., —; T. D. 36456) the rosaries in question were held dutiable under paragraph 167.

**No. 40396.**—Protests 801771, etc., of Lombard & Co. (Boston).

GRINDSTONES.—Merchandise classified under paragraph 81, tariff act of 1913, is claimed dutiable as grindstones under paragraph 100.

Opinion by HAY, G. A. The grindstones in question were held dutiable under paragraph 100, as claimed. Abstract 39860 followed.

BEFORE BOARD 1, NOVEMBER 22, 1916.

**No. 40397.**—Protests 779224 and 782119, etc., of H. Bayersdorfer & Co. (New York and Philadelphia).

IMMORTELLES.—Immortelles in the form of bunches, wreaths, and broken pieces are claimed dutiable by similitude as preserved cut flowers at 25 per cent ad valorem under paragraph 210, tariff act of 1913.

Opinions by MCCLELLAND, G. A. Bayersdorfer *v.* United States (7 Ct. Cust. Appls., —; T. D. 36390) followed holding immortelles dutiable under paragraph 210.

**No. 40398.**—Protests 783960, etc., of Decorative Plant Co. et al. (New York).

ORNAMENTAL FLOWERS, LEAVES, AND STEMS.

MCCLELLAND, *General Appraiser:* The merchandise which is the subject of these protests, though varied in character, was all assessed for duty at the rate of 60 per cent ad valorem under the provision in paragraph 347 of the tariff act of 1913, which reads—

> Artificial and ornamental fruits, grains, leaves, flowers, and stems, or parts thereof, of whatever material composed, not specially provided for in this section, 60 per cent ad valorem.

The alternative protest claims are as follows:

That the merchandise is free under paragraphs 497 or 552, or is dutiable at 15 per cent under paragraph 176 or 368, or at 25 per cent under paragraph 368 or 210, and if not entitled to such free entry or dutiable directly under any one of these paragraphs, then that, by assimilation or material of chief value they are dutiable under one of such paragraphs by reason of the provisions of paragraph 386; and if not dutiable either directly or by similitude as aforesaid, then it is dutiable at either 10 or 15 per cent under paragraph 385 of said act.

In Bayersdorfer *v.* United States (7 Ct. Cust. Appls., —; T. D. 36390) the Court of Customs Appeals, reviewing a decision of the board involving the

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classification of dried and dyed immortelles which had been assessed for duty at the rate of 60 per cent under paragraph 347, supra, held that by reason of the change in the phraseology indicated in paragraph 347 by reason of the conjunctive "and" in the provision for artificial and ornamental fruits, grains, leaves, flowers, and stems, or parts thereof, instead of the disjunctive "or" in paragraph 438 of the tariff act of 1909, and paragraph 425 of the tariff act of 1897, only such fruits, grains, leaves, flowers, and stems, or parts thereof, as are both artificial and ornamental are entitled to classification thereunder.

The court, therefore, also held in that case that immortelles not being *artificial* flowers, but being natural flowers dried and dyed, were entitled to classification by similitude as preserved cut flowers and subject to duty at the rate of 25 per cent ad valorem under paragraph 210, supra.

Government counsel, in a brief filed with the papers, has this to say:

In the Bayersdorfer case, supra, it was conceded that the merchandise involved (dried and colored natural immortelles) was ornamental but not artificial. In the case at bar the Government does not concede that the merchandise is not artificial. The made-up articles are artificial beyond any doubt. The dyed immortelles may be said to be artificial as distinguished from crude on the one hand and imitation on the other. They are artificial in the sense that they have been artificially colored, and therefore no longer natural. They have undergone such a change in appearance and texture by reason of the coloring that they can no longer with accuracy be described as natural.

We can not indorse this view. The mere fact that these leaves and stems have been dyed and thus preserved does not in any sense make them artificial. Their substance is still natural and in appearance they are the same as they were in their natural state.

There are numerous items involved in these protests. Of these we find those described as statice, immortelles, thistles, and lily of the valley, to be preserved cut flowers dried and dyed, and therefore hold them to be subject to duty at the rate of 25 per cent ad valorem under paragraph 210 and paragraph 386 in harmony with the Bayersdorfer case, supra.

All of the other items involved are natural leaves or parts of plants dyed and preserved, and there being no special provision therefor they are subject to duty at the rate of 15 per cent ad valorem under the provisions of paragraph 385 as articles manufactured in whole or in part (Abstract 39274).

The decisions of the collector are so modified, and reliquidation will follow accordingly.

**No. 40399.**—Protests 779225, etc., of Bayersdorfer & Co. (Philadelphia).

ORNAMENTAL LEAVES.—Ornamental leaves, crosses, wreaths, clusters, etc., made chiefly of leaves and statice and thistles, all of which have been dyed, preserved, or bleached, classified at 60 per cent ad valorem under paragraph 347, tariff act of 1913, are claimed dutiable as nonenumerated manufactured articles at 15 per cent under paragraph 385, or as preserved cut flowers, by similitude, at 25 per cent under paragraph 210.

Opinion by McCLELLAND, G. A. On the authority of Bayersdorfer *v.* United States (7 Ct. Cust. Appls., —; T. D. 36390) and Abstract 40398 the leaves, crosses, wreaths, etc., were held dutiable at 15 per cent under paragraph 385, and the statice and thistles under paragraph 210.

**No. 40400.**—Protests 779569, etc., of Morimura Bros. (New York).

ARTIFICIAL FRUIT.—Merchandise returned by the appraiser as artificial fruit, classified at 60 per cent ad valorem under paragraph 347, tariff act of 1913, is claimed dutiable at 45 per cent under paragraph 318 or under paragraph 385.

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Opinion by McCLELLAND, G. A. The articles in question are designed to be used as pincushions. Those in the form of apples, pears, etc., were held properly classified as artificial fruit under paragraph 347. The remaining items were found to be very poor imitations of vegetables, such as tomatoes, beets, and watermelons. They were held dutiable at 45 per cent under paragraph 318.

**No. 40401.**—Protest 806883 of Lewis & Conger (New York).

BELLOWS OF WOOD AND LEATHER.—Bellows made of oak, leather, and other materials, classified as manufactures of leather at 30 per cent ad valorem under paragraph 360, tariff act of 1913, are claimed dutiable as manufactures of wood at 15 per cent under paragraph 176.

Opinion by McCLELLAND, G. A. The items found to be in chief value of wood were held dutiable under paragraph 176. Abstract 38649 followed.

**No. 40402.**—Protest 806372 of J. L. Hopkins & Co. (New York).

LAVENDER FLOWERS.—Merchandise reported by the appraiser to be crude, dried lavender flowers, classified at 20 per cent ad valorem under paragraph 49, tariff act of 1913, is claimed free of duty under paragraph 477.

Opinion by McCLELLAND, G. A. On the authority of Abstracts 39004, 40100, 40326, and 40327 the claim for free entry under paragraph 477 was sustained.

**No. 40403.**—Protests 785384, etc., of Baruch, Wolff & Co. et al. (New York).

WOOL SUITINGS—FLANNELS.

BROWN, *General Appraiser:* This suit is brought to determine the proper classification of certain wool fabrics used for men's wear. They were classified by the collector under the provision in paragraph 288, act of 1913, for wool cloths at 35 per cent ad valorem, and are claimed to be flannels and dutiable under the provision therefor in paragraph 289 at 25 or 30 per cent.

Six witnesses testified on behalf of the importers that they were familiar with the wholesale trade throughout the country and that the term "flannels" had a definite, uniform, and general meaning in the trade. Five of them testified that all the samples introduced in evidence as representing the merchandise in question (Exhibits 1, 2, 3, 4, 5, 7, 8, protests 785384, etc.) were recognized in the trade as flannels used for trousers and suits for outing purposes. The sixth witness stated that all the samples except Exhibits 1, 2, and 3 were flannels. One witness for the importers testified that the goods represented by collective Exhibit 1, protest 764644, were shirting flannels.

The Government also introduced the testimony of six witnesses, who testified that all the goods represented by the exhibits above referred to were not recognized as flannels, because they had been subjected to further processes of manufacture after weaving, which flannels do not generally undergo. They also pointed out distinguishing characteristics in structure, texture, general appearance, finish, stock, etc.

The testimony is legally insufficient to show any definite, uniform, and general usage in trade and commerce of the term "flannels" which would establish a commercial designation differing from the ordinary signification and controlling the classification of the goods in question. In fact, the sharp conflict in the testimony argues against the existence of a commercial designation which is definite, uniform, and general.

The testimony shows that a flannel is a loosely woven fabric, usually of wool or chiefly of wool, of light weight, having a certain soft finish, the texture being practically the same as when it leaves the loom. The distinguishing characteristics between flannels and other woolen fabrics like cheviots and worsteds were pointed out by the witnesses as being shown by the method of manufacture, the material used, the soft texture and appearance when

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finished, and the processes which the cheviots and worsteds, etc., undergo after weaving, to which flannels are not subjected.

Yet it seems that these distinguishing characteristics and differences between goods that are flannels and goods that are not flannels are not apparent from an examination of a particular sample, except to an expert in the trade. It would seem, then, in general that no definite or fixed rule or test can be applied to determine whether or not a certain fabric is a flannel, but each case must depend on the particular testimony presented therein.

On the weight of such testimony in this record we find that the goods in question are not flannels, and that they were properly classified by the collector.

Judgment is therefore rendered in favor of the Government, overruling the protests.

CONCURRING OPINION.

McCLELLAND, *General Appraiser:* I concur in the conclusion that the merchandise involved is not flannels, but properly assessed with duty by the collector, and that the protests should therefore be overruled.

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BEFORE BOARD 1, NOVEMBER 24, 1916.

**No. 40404.**—Protests 788610, etc., of Geo. S. Bush & Co. et al. (Seattle, etc.).

RATTAN REEDS.

McCLELLAND, *General Appraiser:* The merchandise subject of these protests was returned by the appraisers as being reeds manufactured from rattan and was assessed for duty at the rate of 10 per cent ad valorem under paragaph 173 of the tariff act of 1913. Free entry is claimed for all of the merchandise under paragraph 648 of said act as being rattan, unmanufactured.

All of the reeds in question are what are known as Chinese reeds. Several records are consolidated and form the combined record now before us. Much of the testimony is largely repetitious, indicating waste of much time and energy.

The issue presented was passed upon by the board in Abstract 39169. From that decision an appeal was taken to the Court of Customs Appeals, Graser-Rothe *v.* United States (7 Ct. Cust. Appls., —; T. D. 36459), where the decision of the board sustaining the collector's assessment of duty and overruling the protests was affirmed. The testimony now presented not only tends to confirm our former judgment but removes whatever room for possible doubt there may have been as to the soundness of our conclusion in Abstract 39169, supra.

The witnesses repeat that this class of reeds not only has been sold to furniture manufacturers and has been used in making chairs for at least 14 years, but that up to the time when these cases were finally submitted they were still being sold for use in the manufacture of chairs. This is shown particularly by the following testimony of the witness Husselrath.

Q. How many bales would you say that you had delivered in the last three months to chair manufacturers?—A. It is hard to tell.

Q. Large quantities?—A. Oh, yes; considerable.

Q. Well, approximately how many?—A. Approximately I should say about a thousand bales.

Annexed hereto as a part of this decision is a schedule marked "A," which contains the protest number and the invoice description of the reeds involved in each of the protests. It will be noted that on only one of the invoices are the reeds described as being "common," and as to those covered by this particular

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invoice there is no testimony that they were not equal to those invoiced as "extra select," "selected," or "rattan core," or that they were not sold to furniture manufacturers to be made into chairs.

Following the decision of the Court of Customs Appeals in Graser-Rothe *v.* United States, supra, we affirm the collector's assessment in each case.

The protests are overruled.

No evidence having been offered in support of the issue involving the 5 per cent discount of duties under subsection 7 of paragraph J of section 4 of said tariff act, the claims in respect thereof are hereby overruled.

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BEFORE BOARD 2, NOVEMBER 24, 1916.

**No. 40405.**—Protest 794279 of Max Alder (New York).

SAMPLE BOOKS.—Books or portfolios reported by the appraiser to be composed of cotton and paper, made for the insertion of sample cards upon which are pasted samples of lace, cotton being the component material of chief value, were classified as manufactures of cotton at 30 per cent under paragraph 266, tariff act of 1913. They are claimed dutiable as books of all kinds at 15 per cent under paragraph 329.

Opinion by COOPER, G. A. On the authority of Abstract 38100 the articles in question were held dutiable as books of all kinds under paragraph 329.

**No. 40406.**—Protest 799163 of Callender, McAuslan & Troup Co. (Providence).

COTTON TABLE DAMASK.—Merchandise classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913, is claimed dutiable as cotton table damask at 25 per cent under paragraph 263.

Opinion by COOPER, G. A. The cotton table damask in question was held dutiable under paragraph 263. G. A. 7630 (T. D. 34903) followed.

**No. 40407.**—Protest 793978 of M. J. Kelly & Sons (Philadelphia).

COTTON TABLE COVERS.—Cotton table covers classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913, are claimed dutiable as cotton table damask at 25 per cent under paragraph 263.

Opinion by COOPER, G. A. On the authority of G. A. 7780 (T. D. 35724) turkey and green table damask was held dutiable under paragraph 263.

**No. 40408.**—Protest 792034 of Kern Commercial Co. (New York).

BRATTICE CLOTH.—Brattice cloth reported by the appraiser to be plain woven fabrics of single jute yarns, not bleached, dyed, colored, stained, painted, printed, or rendered noninflammable by any process, dutiable under paragraph 408, tariff act of 1913, and classified by the collector as plain woven fabrics of single jute yarns, bleached, dyed, colored, etc., at 10 per cent under paragraph 279, is claimed free of duty under paragraph 408.

Opinion by COOPER, G. A. It was found that the goods had not been bleached, dyed, colored, painted, printed, or rendered noninflammable, but that it was fireproofed in this country after importation. On the record it was held free of duty under paragraph 408.

**No. 40409.**—Protests 791998, etc., of Wm. H. Stiner & Son et al. (New York).

COTTON CLOTH.—The question at issue here is as to the average number of the yarn in cotton cloth classified under paragraph 252, tariff act of 1913.

Opinion by COOPER, G. A. One item was found to have been wrongly classified and as to that the protest was sustained.

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**No. 40410.**—Protest 791054 of Snow's United States Sample Express Co. (New York).

TUCKED WEARING APPAREL.—Merchandise classified as cotton wearing apparel in part of tuckings and cotton wearing apparel, embroidered, at 60 per cent ad valorem under paragraph 358, tariff act of 1913, is claimed dutiable at 30 per cent under paragraph 256, 258, or 266.

Opinion by COOPER, G. A. On the authority of G. A. 7613 (T. D. 34823), affirmed in United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388), certain of the merchandise was held dutiable at 30 per cent under paragraph 256.

**No. 40411.**—Protests 782400, etc., of B. Altman & Co. et al. (New York).

COTTON BATH RUGS.—Bath mats classified at 25 per cent ad valorem under paragraph 264, tariff act of 1913, are claimed dutiable as rugs made of cotton at 20 per cent under paragraph 302.

Opinion by COOPER, G. A. The rugs were found to be of the same character as those passed upon in Abstract 38503. They were accordingly held dutiable under paragraph 302.

**No. 40412.**—Protests 782385, etc., of Santini & Borea et al. (New York).

COTTON QUILTS.—Cotton quilts reported by the appraiser to be woven with a tapestry pattern, classified at 35 per cent ad valorem under paragraph 258, tariff act of 1913, are claimed dutiable at 25 per cent under paragraph 264.

Opinion by COOPER, G. A. On the amended return of the appraiser cotton quilts were held dutiable under paragraph 264. Abstract 36788 (T. D. 34871) followed.

**No. 40413.**—Protests 778782, etc., of Bloomingdale Bros. et al. (New York).

BEDSPREADS.—The appraiser reports that the merchandise consists of cotton bedspreads, not quilts. It was classified as articles of cotton cloth at 30 per cent ad valorem under paragraph 266, tariff act of 1913, and is claimed dutiable under paragraph 252, 263, 264, or 302.

Opinion by COOPER, G. A. Protests unsupported; overruled.

**No. 40414.**—Protests 773292, etc., of Johannes Meyer (New York).

COUCH COVERS—PILE FABRICS.—Pile fabrics in the piece and couch covers made from pile fabrics, classified at 40 per cent ad valorem under paragraph 257, tariff act of 1913, are claimed dutiable at 30 or 35 per cent under paragraph 258, or 20 per cent under paragraph 302.

Opinion by COOPER, G. A. The couch covers in question were held dutiable as Jacquard figured upholstery goods under paragraph 258. Downing *v.* United States (6 Ct. Cust, Appls., 447; T. D. 35984) followed. Protests overruled as to the pile fabrics in the piece.

**No. 40415.**—Protests 760984, etc., of M. H. Rogers et al. (New York).

TABLE COVERS.—The question here is whether certain table covers are made or cut from plushes, velvets, etc., dutiable at 40 per cent under paragraph 257, tariff act of 1913, as classified, or as Jacquard figured upholstery goods under paragraph 258, as claimed.

Opinion by COOPER, G. A. On the authority of Downing *v.* United States (6 Ct. Cust. Appls., 447; T. D. 35984) the table covers in question were held dutiable under paragraph 258.

**No. 40416.**—Protests 752391, etc., of Clawson & Wilson Co. (Buffalo).

MADRAS MUSLIN.—Madras muslin classified as Jacquard figured upholstery goods at 35 per cent ad valorem under paragraph 258, tariff act of 1913, is claimed dutiable at 20 per cent under paragraph 252.

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Opinion by COOPER, G. A. Madras muslin was held properly classified under paragraph 258. United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 477; T. D. 36120) followed.

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BEFORE BOARD 3, NOVEMBER 24, 1916.

**No. 40417.**—Protest 796155 of American Express Co. (New York).

METER JEWELS.—Sapphires for use in electric meters, some of which were classified at 20 per cent ad valorem under paragraph 81, tariff act of 1913, and some at the same rate under paragraph 357, are claimed dutiable as jewels for meters at 10 per cent under paragraph 161.

HAY, *General Appraiser:* * * * Congress, in paragraph 161 of the tariff act of 1913, inserted into the tariff law a provision for jewels used in the manufacture of watches, clocks, or meters. Theretofore that provision of law provided only for jewels used in the manufacture of watches or clocks. Under this change in the law, the testimony, we think, brings this merchandise fairly within the rule laid down by the Court of Customs Appeals in United States *v.* Elgin Watch Company (5 Ct. Cust. Appls., 336; T. D. 34532). The protest is sustained and the collector directed to reliquidate the entries assessing duty under paragraph 161 at 10 per cent.

**No. 40418.**—Protest 804714 of Jose Llopis (New York).

TARE ON OLIVE OIL IN TINS.

HAY, *General Appraiser:* The only question raised by this protest is the amount of olive oil upon which the importer should pay duty. It was invoiced and entered at 5,116 pounds, or 676 gallons. According to the weigher's return, which is forwarded by the collector as a part of the record in this case, there were 5,114.67 pounds, or 676 gallons. The collector required the importer to label the cans in question, 1,160 cans as containing 1 quart each and 580 cans as containing 2 quarts 7 ounces each, which is approximately equivalent to 613 gallons. The collector liquidated the entry upon the basis of the entered weight and the weight of the weigher's return. If this is permitted to stand a gross injustice will be done and a situation presented which it is not an exaggeration to say would be immoral. For the Government official to require the importer to place his olive oil upon the market proclaiming to the world that there were 613 gallons of it, and then charge him duty on that identical olive oil, not a drop more or less, as if there were 676 gallons, does not appeal to the ordinary mind as a very righteous transaction.

The food and drugs act of June 30, 1906 (34 Stat., 768), as amended by the act of March 3, 1913 (37 Stat., 732), requires that packages containing merchandise of this character should be labeled stating the exact amount which each package contains. This amount is ascertained by the Agricultural Department. The law requires, however, that before the collector shall release such merchandise he shall require the importer to place upon each package the amount contained therein. Apparently in the case at bar, the collector being presumed to have done his duty, required that the cans be labeled with the exact amount which they were found to contain. Upon this amount, and this amount alone, should the importer be required to pay duty. The protest is therefore sustained and the collector directed to reliquidate the entry assessing duty upon the amount of olive oil which he required the importer to label his cans as containing.



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(T. D. 36841.)

*Foxtail chain in lengths—Manufacture of metal.*

Appeal directed from decision of the Board of United States General Appraisers of November 10, 1916, G. A. 7986 (T. D. 36799), involving the classification of certain foxtail chain.

TREASURY DEPARTMENT, *November 29, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 10th instant, inviting attention to the decision of the Board of United States General Appraisers of November 10, 1916, G. A. 7986 (T. D. 36799), wherein certain foxtail chain, some items of which, it appears, had been assessed with duty at the rate of 50 per cent ad valorem and some others at 60 per cent ad valorem under paragraph 356 of the tariff act of October 3, 1913, was held by the board to be dutiable at the rate of 20 per cent ad valorem as a manufacture of metal not specially provided for under paragraph 167 of the said act.

I have to request that you file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, so far as it relates to the merchandise in question, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(105731.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

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(T. D. 36842.)

*Ship's equipment.*

Appeal directed from decision of the Board of United States General Appraisers of October 4, 1916, G. A. 7971 (T. D. 36720), involving the assessment of duty on certain spare parts of steam pumps.

TREASURY DEPARTMENT, *November 29, 1916.*

SIR: The department duly received your letter of October 21, 1916, inviting attention to the decision of the Board of United States General Appraisers of October 4, 1916, G. A. 7971 (T. D. 36720), involving the assessment of duty on certain spare parts of steam pumps which formed parts of a steamship being constructed at Wilmington, Del. The articles, it appears, were assessed with duty, but the board held them to be free of duty under section 5 of the Panama Canal act (37 Stat., 562) or subsection 6 of paragraph J of section 4 of the tariff act of October 3, 1913.

In accordance with your recommendation, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a

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review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,
(93000-12-1.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

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(T. D. 36843.)

*Drawback on Panama hats.*

Drawback on Panama hats bleached by the Ecuadorian Panama Hat Co., of New York, N. Y., from imported Panama hat bodies in a rough or unfinished condition.

TREASURY DEPARTMENT, *December 2, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on Panama hats bleached by the Ecuadorian Panama Hat Co., of New York, N. Y., from Panama hat bodies in a rough or unfinished condition.

The allowance shall not exceed one imported Panama hat body in a rough or unfinished condition of the same grade and value for each bleached Panama hat exported.

The sworn statement of the manufacturers, dated November 13, 1916, is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on bleached Panama hats exported on and after October 21, 1916.

Respectfully, ANDREW J. PETERS,
(59568.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36844.)

*Drawback on Habutai silk.*

T. D. 35566 of July 1, 1915, providing for payment of drawback on dyed and finished silk, extended to cover the dyeing of plain white silk woven fabrics by the United Piece Dye Works, of Lodi, N. J., for the account of Nozawaya & Co., of New York, N. Y.

TREASURY DEPARTMENT, *December 2, 1916.*

SIR: The department's regulations of July 1, 1915 (T. D. 35566), providing for the payment of drawback on Habutai silk dyed and finished by various manufacturers for the account of J. R. Simons & Co., of New York, N. Y., are hereby extended to cover, so far as applicable, the dyeing of plain white silk woven fabrics by the United Piece Dye Works, of Lodi, N. J., for the account of Nozawaya & Co., of New York, N. Y.

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The sworn statements of the applicants, dated November 13, 1916, and of the manufacturers, dated June 9, 1915, are transmitted herewith for filing in your office.

Respectfully, ANDREW J. PETERS,
(105576.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36845.)

*Flax roving.*

Flax roving dutiable at the rate of 15 per cent ad valorem by similitude to ramie roving under paragraphs 270 and 386, tariff act of 1913.

TREASURY DEPARTMENT, *December 2, 1916.*

SIR: The department duly received your letter of October 25, 1916, inclosing a communication from the appraiser at your port relative to a variance in the practice in the classification of so-called flax roving, as per sample submitted.

The merchandise consists of 13 strands, loosely twisted together, and the appraiser expresses the opinion, concurred in by you, that it is dutiable at the rate of 15 per cent ad valorem by similitude to ramie roving under paragraph 270 of the tariff act of 1913 or at the same rate as a nonenumerated manufactured article under paragraph 385.

The appraiser at another port, it appears, is of the opinion that the merchandise consists of 13 single strands made of No. 2 flax yarn, with 8 to 10 twist to the foot, under 5 lea, and that it is a completed article specially provided for under paragraph 269.

The appraiser at your port expresses the opinion that the merchandise is a roving and not a yarn, and submits two letters from the trade from which it appears that the merchandise is a rove, which is defined as a roving. It does not appear that the article is a thread, twine, or cord, as covered by paragraph 269, and the department concurs in the views that, following the principles of T. D. 29239 and T. D. 30010 relative to ramie sliver, the flax roving is dutiable at the rate of 15 per cent ad valorem by similitude to ramie roving under paragraph 270 or in the alternative at the same rate as a nonenumerated manufactured article under paragraph 385.

You will therefore assess duty on the merchandise in question at the rate of 15 per cent ad valorem by similitude to ramie roving under paragraph 270 of the tariff act of 1913 by virtue of the similitude clause of paragraph 386.

Respectfully, ANDREW J. PETERS,
(105624.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36846.)

*Paste cards.*

So-called glass or paste cards over 1 inch in diameter dutiable at the rate of 50 per cent ad valorem as manufactures of paste under paragraph 95, tariff act of 1913.

TREASURY DEPARTMENT, *December 2, 1916.*

SIR: The department duly received your letter of October 26 last, inclosing a communication from the appraiser at your port relative to a difference in practice in the classification of so-called glass card, a sample of which is submitted.

The articles are about 1⅝ inches in diameter and one-fourth of an inch thick and are perforated lengthwise, so that when strung they will hang with flat faces in a vertical position.

The appraiser at your port expresses the opinion, concurred in by you, that the articles are dutiable at the rate of 30 per cent ad valorem as manufactures of paste under paragraph 95 of the tariff act of 1913, but it appears that at another port such merchandise is returned as dutiable at the rate of 35 per cent ad valorem as beads, unstrung, under paragraph 333 of the said act, on the authority of T. D. 33166, wherein the Court of Customs Appeals held certain articles consisting of glass beads, bars, and ornaments, drilled, to be properly dutiable as beads under paragraph 421 of the tariff act of 1909.

The merchandise in question under consideration in T. D. 33166, it appears, was of such inferior quality as to render it unfit for the manufacture of jewelry, which was the principal question involved. While it appears that some of the articles were in excess of 1 inch in length, the size does not appear to have been particularly considered.

In the present case the articles, in view of G. A. 3067 (T. D. 16103) and G. A. 5819 (T. D. 25696), being over 1 inch in diameter, appear to be excluded from the term "beads," and it appears that the material of which they are composed is similar to that used in the manufacture of imitation precious stones and is generally known as paste. (Note T. D. 32802.) The department, therefore, concurs in the views that the articles now in question are properly dutiable at the rate of 30 per cent ad valorem as manufactures of paste under paragraph 95 of the tariff act of 1913.

You will be governed accordingly.

Respectfully,
(95044.)

ANDREW J. PETERS,
*Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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## (T. D. 36847.)

### *Appraisement of imported cheese.*

**Method of procedure and analyses and the interpretation of analyses of cheese.**

TREASURY DEPARTMENT, *December 2, 1916.*

*To chemists at customs laboratories and others concerned:*

In order to secure uniformity of practice at all customs laboratories, the following procedure is prescribed for the analyses and interpretation of the analyses of imported cheese for the purposes of appraisement:

*Preparation of sample.*—When the cheese can be cut take a narrow wedge-shaped segment reaching from the center to circumference, remove the rind, cut into small pieces, and pass through a meat chopper two or three times.

When the cheese can not be cut, take the sample with a cheese trier. When possible draw three plugs extending past the center of the cheese, one from the center, one from a point near the outer edge, and one halfway between the other two. Pass through grinder as directed above, place in stoppered bottle or jar, and store in a cool place. As soon as possible after receiving a sample any pieces of rind should be removed, the sample put through a suitable meat chopper twice to render it homogeneous, and then returned to a bottle and the bottle stoppered.

*Determination of fat.*—Place 1 gram of the sample with 9 cubic centimeters of water and 1 cubic centimeter concentrated $NH_4OH$ in a narrow beaker of from 100 to 125 cubic centimeters capacity; rub up with a glass rod; digest at a gentle heat until the casein is well softened and neutralize with concentrated HCL (using litmus paper as an indicator); add 10 cubic centimeters more of concentrated HCL and a pinch of pure quartz sand; then cover the beaker with a watch glass and boil gently for five minutes; cool somewhat. Transfer to a Rohrig tube or somewhat similar apparatus; rinse the beaker with 25 cubic centimeters of washed ethel ether; shake vigorously for half a minute; then add 25 cubic centimeters of petroleum ether and shake again for half a minute. Let stand 20 minutes or until the upper liquid is practically clear and its lower level constant. Draw off as much as possible of the ether fat solution (usually 0.5 to 0.8 cubic centimeter will be left) into a weighed flask through a diminutive quick-acting filter of selected paper. The flask should always be weighed with a similar one as a counterpoise. Reextract the liquid remaining in the tube, this time with 15 cubic centimeters of each ether, shaking vigorously half a minute with each and allow to settle. Draw off the clear solution through the small filter into the same flask as before and wash the tip of spigot, the funnel,

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and the filter with a few cubic centimeters of a mixture of the two ethers in equal parts (previously mixed and free from deposited water). For absolutely exact results the reextraction must be repeated. This third extraction yields usually not more than a milligram of fat if the previous ether fat solutions have been drawn off closely. Evaporate the ether slowly in the steam bath, then dry the fat in a water oven until loss of weight ceases. Prove the purity of the fat by dissolving in a little petroleum ether. Should a residue remain, wash the fat out completely with petroleum ether, dry the residue, weigh, and deduct the weight. Finally deduct the weight obtained by blank determination on the chemicals used.

*Determination of nitrogen.*—Mix one gram of the sample in a 500 cubic centimeter Kjeldahl digestion flask with 0.7 gram of mercuric oxide, 10 grams of potassium sulphate, and 25 cubic centimeters of sulphuric acid. After heating gently until frothing ceases boil the mixture until colorless and then heat with a full flame one hour or more. During the solution of the cheese in the digestion mixture great caution must be used that the cheese shall not char through too rapid heating. After cooling add about 300 cubic centimenters of water, 30 cubic centimeters of 4 per cent potassium sulphide solution and 90 cubic centimeters saturated sodium hydroxide solution. Distill into a standard acid and titrate with standard alkali, as in the usual Kjeldahl method. Multiply the percentage of nitrogen by 6.38 to obtain the per cent of protein. Divide the percentage of fat by the percentage of protein, and if the quotient is 1 or greater than 1, the cheese should be regarded as made from whole milk. Should the quotient be less than 1 the cheese should be regarded as made from partially skimmed milk. In the event that the cheese is a whey or so-called "sugar cheese," the fat shall be determined by the following method:

Cover the perforations in the bottom of the extraction tube of a Knorr or Johnson extractor with dry asbestos felt, and on this place a mixture containing equal parts of anhydrous copper sulphate and pure, dry sand to the depth of about 5 cubic centimeters, packing loosely. Cover the upper surface of this material with a film of asbestos. Place on this 2 to 5 grams of the sample, and cover the extraction tube with filter paper cone or cotton plugget. Extract with anhydrous ether for five hours in a continuous extraction apparatus, remove the cheese and grind it to a fine powder, with pure sand, in a mortar; replace the mixed cheese and sand in the extraction tube, washing the mortar with ether and adding the washings to the tube, and continue the extraction for at least 10 hours. Evaporate off the ether and dry the fat in a tared vessel in a water bath to constant weight. The weight obtained multiplied by 100 and divided by the weight of the cheese taken gives the per cent fat. In addition to

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the fat determination the lactose should be determined by the copper reduction method, or polariscopically if preferred; and in case the lactose over fat ratio is found to be 1:0.70 or above, the cheese should be regarded as a whole-milk product, but in case the ratio is found to be below 1:0.70 the cheese should be classed as a skimmed or partly skimmed cheese.

(75398.) ANDREW J. PETERS, *Assistant Secretary.*

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(T. D. 36848.)

*Revocation of the authority of the Title Guaranty & Surety Co., of Scranton, Pa.*

[Circular No. 69.]

TREASURY DEPARTMENT, *December 1, 1916.*

*To bond-approving officers and others concerned:*

This is to inform you that on or about November 17, 1913, the Title Guaranty & Surety Co., of Scranton, Pa., ceased to transact all fidelity and surety insurance business. Since that time the company has filed with the department its quarterly and annual financial statements, as required by the act of Congress approved August 13, 1894 (28 Stat., pp. 279–280), as amended by the act of Congress approved March 23, 1910 (36 Stat., p. 241). The last statement so filed was as of September 30, 1916, the examination and audit of which indicated that the company had a surplus of $70,478.61, in addition to an unimpaired capital of $250,000.

On or about November 15, 1913, the Title Guaranty & Surety Co. entered into a reinsurance agreement with the American Surety Co., of New York, N. Y., for the reinsurance of certain selected risks of the first-named company, among which were various risks which had been executed on behalf of the Government. This department has not, however, approved such reinsurance agreement, nor was the Government made a party thereto.

On or about December 29, 1914, the Title Guaranty & Surety Co. entered into a reinsurance agreement with the Casualty Co. of America, of New York, N. Y., for the reinsurance of certain selected risks of the first-named company, among which were various risks which had been executed on behalf of the Government. This agreement, as well as the one referred to in the previous paragraph, was prospective only, and did not cover prior thereto any contingent liability of the Title Guaranty & Surety Co.

It should be stated, however, that the Casualty Co. of America has executed a form of reinsurance agreement approved by the Treasury Department running directly to the Government, in which

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it assumes the liability of the Title Guaranty & Surety Co., both prospectively and retroactively, in connection with those Government bonds which it has reinsured, among which are numerous bonds of trustees in bankruptcy.

Since the rendition of its financial statement as of September 30, 1916, the Title Guaranty & Surety Co. has declined to submit further financial statements to this department, and has formally requested that its authority previously granted by the Government be revoked and the company relieved of filing any further financial statements with the Section of Surety Bonds of the Treasury Department. In compliance with the request of the company this circular is issued, revoking said authority.

The Treasury Department, being hereafter relieved of any supervision over the affairs of this company, deems it necessary to request that all bond-approving officers of the Government make a careful examination of their files and records to determine therefrom the amount of all contingent and actual liability which may hereafter result in a claim against the Title Guaranty & Surety Co., and to report the result of such examination to the Section of Surety Bonds of this department not later than January 1, 1917. In making the report, the name of the principal, the date and penalty of the bond, the nature of the claim, the circumstances out of which it arose, and the status of the claim at the time of the report should be carefully set out.

Upon the receipt of these reports from bond-approving officers the department will determine whether strengthening bonds shall be required from the principals, in addition to those executed by the Title Guaranty & Surety Co., where such bonds have been prospectively reinsured by solvent surety companies doing business with the Government. It is understood that in all other cases where Government bonds have not been prospectively reinsured with other solvent and acceptable surety companies steps should be immediately taken to require new bonds without further notice from the Treasury Department.

All officers and employees of the United States who have been bonded by the Title Guaranty & Surety Co. who disburse or receive Government moneys or other funds for which their bonds are liable should promptly submit their final accounts for audit by the Government in order that any differences may be determined and adjusted without delay.

Bond-approving officers are directed to acknowledge the receipt of this circular, and to notify the Section of Surety Bonds of the Treasury Department promptly of their compliance with these instructions.

BYRON R. NEWTON,
*Acting Secretary of the Treasury.*

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## (T. D. 36849—G. A. 7996.)

### *Straw hats, not blocked.*

Untrimmed hats made from pieces of buckram, so cut and shaped as to make the separate pieces suitable for use as crowns, sides, or brims of hats, and which, after being covered with straw, are then fastened or sewed together by hand or machine, the completed article deriving its shape or form during the process of uniting the separate pieces of buckram together and not by the process of blocking, are not dutiable as blocked hats. As they are composed in chief value of straw, they are properly dutiable at the rate of 25 per cent ad valorem under the provision in paragraph 335, tariff act of 1913, for "hats, * * * composed wholly or in chief value of straw, * * * whether wholly or partly manufactured, but not blocked."

United States General Appraisers, New York, November 27, 1916.

In the matter of protest 797372–58530 of Gage Bros. & Co. against the assessment of duty by the collector of customs at the port of Chicago.

[Reversed.]

*Roscoe Wilcox* for the importers.

*Bert Hanson*, Assistant Attorney General (*Martin T. Baldwin*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

HOWELL, *General Appraiser:* The articles in question consist of untrimmed straw hats. They were returned by the appraiser as "straw hats blocked," and were assessed for duty by the collector at the rate of 40 per cent ad valorem under the provisions of paragraph 335, tariff act of 1913. The importers claim that the hats have not been blocked, and that they are properly dutiable at the rate of 25 per cent ad valorem under said paragraph 335. The pertinent provisions of paragraph 335 read as follows:

335. * * * Hats, bonnets, and hoods composed wholly or in chief value of straw, chip, grass, palm leaf, willow, osier, rattan, cuba bark, or manila hemp, whether wholly or partly manufactured, but not blocked or trimmed, 25 per centum ad valorem; if blocked or trimmed, and in chief value of such materials, 40 per centum ad valorem.

On the trial two sample hats taken from the importation were admitted in evidence. It appears from the testimony—and an examination of the samples confirms the proof—that the foundation of these hats is made from pieces of buckram so cut and shaped as to make the separate pieces suitable for use as crowns, sides, or brims of hats, as the case may be. That after each piece is formed or shaped it is then covered with straw, and when so covered the respective parts are fastened or sewed together either by hand or machine, the necessary wire being introduced by the maker at the base of the crown and the outer edge of the brim to give to the hat the required shape and stiffness. When these parts are sewed together the completed article is a hat

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properly formed and shaped to make it ready and suitable for the application of such trimming as the wearer may desire.

The importers contend that as the hats in question derive their shape or form during the process of uniting the separate pieces of buckram together, and not by the process of blocking, they are not in fact blocked hats; that a blocked hat is a hat which receives its form or shape by molding or stretching it on a block.

One of the definitions of the verb *block* as given in Webster's Dictinary, is "to shape on, or stamp with, a block; as to *block* a hat."

From this definition it appears that the purpose of blocking a hat is to give it form and shape. It will be observed, however, that the form or shape is produced by the use of an article or form known as a "block."

Congress has recognized that hats of straw, chip, etc., may be wholly manufactured and yet not be blocked hats, for provision is made in said paragraph 335 for "hats, bonnets, and hoods composed wholly or in chief value of straw, * * * whether wholly or partly manufactured, but not blocked."

As already stated, the hats in question were made by hand and were not put through the process of blocking in order to give them size, form, or shape. We think the record and the form and construction of the hats as imported impel us to conclude that the hats in question are not blocked.

This conclusion is not in conflict with our ruling in Comey & Johnson's case, Abstract 39122, which the assistant attorney general claims in his brief is conclusive of the issue in the case at bar. In that case the testimony showed that the hats were formed to the block as they were made, whereas no form or block was used in the construction of the hats in the case at bar.

The claim in the protest that the hats in question are properly dutiable as hats not blocked or trimmed at the rate of 25 per cent ad valorem under paragraph 335 of said act is accordingly sustained. The claim that a discount of 5 per cent on the duties imposed should be allowed under subsection 7 of paragraph J of section 4, tariff act of 1913 is overruled, the importers having failed to introduce any evidence to sustain that claim.

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(T. D. 36850—G. A. 7997.)

*Depreciated currency.*

DEPRECIATED CURRENCY—REGULATIONS.

In order that importers may avail themselves of the benefit of a depreciated currency by the method provided for in section 2903, Revised Statutes, they must comply with the regulations promulgated under authority thereof and furnish the certificate of depreciation on Form 144 required by such

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regulations (article 692, Consular Regulations of 1896, amended by Executive order of May 28, 1914, T. D. 34542). Substitution of another certificate in place of the one provided for on Form 144 can not be made.

United States General Appraisers, New York, November 29, 1916.

In the matter of protest 792543 of Salamy & Tweel against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

*Brooks & Brooks* (*Ernest F. A. Place* of counsel) for the importers.

*Bert Hanson*, Assistant Attorney General (*Robert Hardison*, special attorney), for the United States.

Before Board 3 (WAITE and HAY, General Appraisers.)

WAITE, *General Appraiser:* In this case the invoice was consulated at Funchal, Madeira. The invoice is made out in escudos, Portuguese currency. There is nothing on its face to indicate whether this was the standard coin currency of Portugal or a depreciated currency. Liquidation was on the basis of the standard coin currency as proclaimed by the Secretary of the Treasury for the quarter in which the invoice was consulated. The importers claim that the money of the invoice is a depreciated currency, and for proof of that fact rely on the certificate on the back of the invoice entitled "Consular certificate," it being asserted by the importers that this consular certificate takes the place of and is equal to the certificate on Form 144 provided for by consular regulations promulgated under authority of section 2903 of the Revised Statutes. The certificate referred to is signed by the American consular agent and contains the following, from which the importers contend the percentage of depreciation on the amount of the invoice is shown:

I further certify that a fee of $2.50 United States gold, equal to 2.760 (local currency), has been paid by affixing stamps to the duplicate copy of this document.

We do not think this would be sufficient proof that the money mentioned as the local currency in said certificate was the same money mentioned on the face of the invoice, if the question were to be determined by that fact. We are of the opinion, however, that a depreciation contemplated by section 2903 of the Revised Statutes must be shown as provided for by the consular regulations passed thereunder, and that they must be strictly construed. The regulations provide (article 692, Consular Regulations of 1896, as amended by Executive order of May 28, 1914, T. D. 34542):

*Currency certificates.*—The price of merchandise obtained by purchase or shipped pursuant to an agreement of purchase must be stated in the currency actually paid or agreed to be paid therefor; and when the currency paid or agreed to be paid is depreciated, a currency certificate (Form 144) must be attached to the invoice showing the percentage of depreciation as compared

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with the corresponding standard coin currency and the value in such standard coin currency of the total amount of the depreciated currency paid for merchandise included in the invoice. * * * This certificate should show not the value of the depreciated currency in money of account of the United States, but its value in the terms of the standard coin currency in comparison with which the currency used in the purchase is depreciated.

Tried by this test, does the certificate relied upon by the importers, printed on the back of the invoice on Form 140, comply with the requirements of this regulation? It will be observed that it does not show the value of the depreciated currency in terms of the standard coin currency of the country, but rather the value of a certain amount of United States money in what is claimed to be the depreciated currency. In other words, it does not comply with the requirements of the certificate provided for by law under which the importer is allowed to claim liquidation on the basis of depreciated currency.

See in this connection Hadden *v.* Merritt (115 U. S., 25); United States *v.* Klingenberg (153 U. S., 93); and Cramer *v.* Arthur (102 U. S., 612). In the latter case the court said:

If the currency is a standard one, based on coin, the Secretary's proclamation fixes it; if it is a depreciated currency, the parties may have the benefit of a consular certificate. To go behind these and allow an examination by affidavits in every case would put the assessment of duties at sea. It would create utter confusion and uncertainty. * * * These transactions must be governed by the regulations in force at the time. It is of the utmost consequence to the Government, and it is, on the whole, most beneficial to importers, that the value of foreign moneys should be officially ascertained, and that they should be fixed by a uniform method or rule.

From the foregoing we conclude that where regulations have been provided they must be strictly complied with, and a substitution can not be made, as is sought in this case, of one certificate for another. Hence we think that the collector was justified in liquidating the entry on the basis of the standard gold escudos, which it is presumed was the currency of the invoice.

The protest is overruled.

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(T. D. 36851—G. A. 7998.)

*Depreciated currency.*

DEPRECIATED CURRENCY—CONSUL'S CERTIFICATE A VERITY.

Pursuant to article 692 of Consular Regulations of 1896, as amended by Executive order of May 28, 1914 (T. D. 34542), there was attached to an invoice of Mexican hats a consular certificate on Form No. 144, stating that the currency in which the invoice was made out was 20 per cent of the standard money of Mexico. Several months later, but before liquidation, a second certificate, stated to be in correction of the certificate attached to the invoice, was presented to the collector, which gave as the correct value of the currency 16 per cent of the standard money instead of 20 per cent. *Held*, that the cer-

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tificate first filed imports a verity and, in the absence of fraud, can not be traversed nor corrected.

United States General Appraisers, New York, November 29, 1916.

In the matter of protest 801331 of Brown & Roese against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

*Strauss & Hedges* for the importers.

*Bert Hanson*, Assistant Attorney General (*Robert Hardison*, special attorney), for the United States.

Before Board 3 (WAITE and HAY, General Appraisers).

WAITE, *General Appraiser:* An importation of hats was made from Mexico. They arrived and were entered at the port of New York on August 16, 1915. Attached to the invoice on entry was a certificate entitled "Certificate of the value of currency." Such certificate is forwarded pursuant to article 692 of the Consular Regulations of 1896, as amended by Executive order of May 28, 1914 (T. D. 34542), which regulation was promulgated by the President under authority of section 2903 of the Revised Statutes of the United States. This certificate was dated July 7, 1915. The invoice to which it is attached is dated July 7, 1915. In the certificate above referred to the currency in which the goods were purchased is stated to be 20 per cent of the standard money of Mexico, proclaimed by the Secretary of the Treasury to be the peso of a value of 49.8 cents of United States money for the quarter in which the invoice was consulated. Subsequent to the entry another certificate was filed wherein the value of the money in which the goods were purchased is certified to be 16 per cent of the standard money of the country instead of 20 per cent. At the bottom of this certificate is the following typewritten notation:

This certificate is extended in correction of the certificate attached to the invoice No. 258, legalized on July the 7th ultimo, as by an error the Form No. 144 attached to said invoice is made out at 20 per cent in place of 16 per cent.

The entered value was approved by the appraiser and the duty was liquidated on December 11, 1915. The second certificate is dated November 4, 1915. It is impossible to determine when it was filed, because of the careless and loose way in which the filing seems to have been recorded. We think, however, it was filed before liquidation took place. The importer now insists that liquidation should have been in accordance with the depreciation indicated in the second certificate, to wit, the one dated November 4, instead of the one which was attached to the invoice upon entry. This certificate furnishes to the collector the only authority he has for liquidating at a less value than the proclaimed value. It imports a verity, and, in our judgment, it can not be traversed or disputed. We are of the opinion that an issue could not be made as to the correctness of this cer-

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tificate in the absence of fraud; and on the same ground we are of the opinion that it can not be amended or corrected by the consul. Note Cramer *v.* Arthur (102 U. S., 619); Hadden *v.* Merritt (115 U. S., 25); Masson's case, G. A. 6812 (T. D. 29278), affirmed in Masson *v.* United States (1 Ct. Cust. Appls., 149; T. D. 31209). It would be a dangerous precedent to establish that a consul could vary a certificate or change the value of the money stated therein. Besides, we are of the opinion that it would be against public policy to permit such a proceeding.

We do not concur in the opinion of the Secretary of the Treasury as expressed in his communication of March 16, 1916, addressed to the collector, that to follow the certificate dated November 4 would result in a liquidation at less than the appraised value. The legitimate appraisal is limited to the number of pesos in the currency of the invoice found to be the market value, regardless of the value of such pesos in the standard coin currency, and when so found the conversion into money of the United States is entirely a matter for the collector, guided by the value stated in the consular certificate on Form 144.

We hold that the liquidation on the basis of the value stated in the certificate attached to the invoice was the correct liquidation.

The protest is overruled.

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(T. D. 36852—G. A. 7999.)

*Parts of a machine tool.*

Metal parts constituting a machine tool having been imported in two distinct shipments, and separately invoiced and entered, are, in the absence of a special provision for such parts, properly subject to duty at the rate of 20 per cent ad valorem under paragraph 167, tariff act of 1913, as manufactures of metal not specially provided for rather than dutiable at the rate of 15 per cent ad valorem as an entirety under the provision in paragraph 165 of said act for "machine tools."

The well-settled rule that merchandise must be classified in its condition as imported can not be compromised or deviated from as the result of the collector withholding classification of the parts in the first shipment pending the possible arrival of remaining parts by subsequent shipments.—United States *v.* Schoverling (146 U. S., 76); United States *v.* Irwin (78 Fed., 799).

United States General Appraisers, New York, December 1, 1916.

In the matter of protests 799138, etc., of A. T. Otto *et al.* against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

*Strauss & Hedges* (*Allan R. Brown* of counsel) for the importers.

*Bert Hanson*, Assistant Attorney General (*Harry M. Farrell*, special attorney), for the United States.

Before Board 2 (Fischer, Howell, and Cooper, General Appraisers).

Fischer, *General Appraiser:* These protests have reference to two distinct importations, each separately entered on different dates.

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Entry 109053 covers two cases containing metal articles shipped via steamship *Lord Downshire*, which arrived at the port of New York from Havre, France, on June 23, 1915, on which date the goods were duly entered for consumption by Albert T. Otto, the purchaser and ultimate consignee thereof. Entry No. 40897 includes, among other things, certain metal articles packed in three cases, shipped via steamship *Lord Downshire*, which arrived at the port of New York from Havre, France, on September 2, 1915, said articles being entered for appraisement on September 7, 1915, by P. C. Kuyper & Co. as the customhouse brokers and agents for said Albert T. Otto, the purchaser and ultimate consignee of the goods. The appraiser treated each entry separately as covering parts of a machine tool, and in making his advisory classification of the merchandise submitted the following report:

The merchandise returned for duty under the above entries as a manufacture of metal at 20 per cent ad valorem under paragraph 167 consists of parts of a gear shaper or gear-cutting machine tool. The whole constitutes one complete gear shaper or gear-cutting machine tool. As they are imported in different shipments and under different entries, they can not be considered for dutiable purposes as an entirety following the principle laid down in 78 Fed., 799.

The claim made by the importers is that these metal parts, although imported in different shipments and separately entered, should nevertheless have been classified by the collector as constituting an entirety, and that duty should therefore have been levied thereon at the rate of 15 per cent ad valorem under the provision in paragraph 165 of the act of 1913 for "machine tools," since it is duly admitted by the Government that if said parts had been shipped as a single importation they would have been properly classifiable as a machine tool within the congressional definition of that term as set forth in said paragraph 165.

In other words, it is alleged by the importers that both the appraiser and the collector erred in treating each shipment as comprising separate dutiable entities by classifying the parts enumerated on each invoice as incomplete machines, and consequently covered by the general provision for manufactures of metal not specially provided for in paragraph 167 of said act rather than as representing collectively a single machine tool as comprehended by paragraph 165.

Inasmuch as the issue presented involved solely a question of law, we shall here briefly state the arguments advanced by the importer in support of his extremely novel contention:

(1) When properly assembled and installed in position the said parts together constitute a complete machine tool within the statutory definition thereof.

(2) That as a machine tool it was ordered, made, purchased, and as far as practicable was intended to be shipped as an entirety, and

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when finally set up in place in the factory for which they were ultimately destined the said parts were actually incorporated in and formed integral parts of a complete machine tool.

(3) Being large and cumbersome, the said parts necessarily had to be packed in separate cases for convenience in transportation, and the cases being bulky and numerous could not all be placed on one of the small Swiss freight cars.

(4) That the second shipment was unavoidably delayed as a result of being detained by the French Government at the port of exportation for the purpose of investigating whether or not the goods were of enemy origin.

(5) That the parts which arrived in the first shipment were utterly useless without the remaining parts in the second shipment.

(6) That, as shown by the invoices, both importations were liquidated at approximately the same time.

Upon these facts, which for the purposes of the case we will concede as conclusively established of record, we have presented for our determination this question of law: Can parts of a complete machine tool be imported in two distinct shipments and still be considered for tariff purpose as constituting a machine tool within the meaning of paragraph 165?

Following the decision of the United States Circuit Court of Appeals, Second Circuit, in the case of United States *v.* Irwin (78 Fed., 799), and numerous other decisions of like tenor, we unhesitatingly answer the query in the negative. In the cited case the court had under consideration a single importation comprising gun barrels and gun stocks, with locks, etc., constituting all the parts of complete breech-loading shotguns, said parts being packed in various cases and separately invoiced. The court held the importation to consist of shotguns and to be so dutiable, on the theory that it was well-settled doctrine that merchants were at liberty so to manufacture and so to import their goods as to subject them to the lowest possible duties under the tariff laws. But that the court entertained no such view as to cases where the parts are shipped in separate vessels is made plainly manifest from the following language quoted from its opinion in that case:

> When the barrels and stocks are shipped upon different vessels, it may happen that they can never be assembled together again as a complete gun. The dangers of navigation and other contingencies may intervene to prevent it. It is not for the customs officers, in imposing duties, to speculate upon these contingencies. They must take the articles as they find them to be upon examination. If they can not, by assembling them together, discover that they are really a different thing, it is their duty to classify them as the article they purport to be.

Moreover, in distinguishing the facts there present from those which prevailed in the case of United States *v.* Schoverling (146



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U. S., 76), the court reiterated the views expressed by the United States Supreme Court in the latter case that "the intent of the importers to put the gun stocks with barrels separately imported, so as to make here completed guns for sale, can not affect the rate of duty on the gun stocks as a separate importation."

But counsel for the importers, in his brief filed with the papers herein, seeks to eliminate from the present case the purely speculative feature referred to by the court in the Irwin case, *supra*, as necessarily incident to attempting to treat as entireties parts of complete articles imported on different vessels by inviting the board's attention to the alleged fact disclosed by the invoices that the metal parts contained in the first importation were not returned by the appraiser until after the arrival of the remaining parts in the second shipment, and not even then until after the Government examiner had satisfied himself concerning their relation to the complete machine tool, as the latter was finally installed in position at the factory in Yonkers for which it was ultimately destined, the inference being that the examiner in making such final examination must necessarily have had in mind the complete machine tool as the dutiable entity and not the various parts thereof as separately enumerated on the two invoices.

The uncontradicted testimony of the examiner, however, is to the contrary. He stated that he conducted the usual preliminary inspection of the goods in each shipment upon their arrival at the dock; that his final examination at the factory of the complete machine was merely for the purpose of checking up the values of the respective parts enumerated on each invoice; and that such examination was conducted regardless of the fact that the parts were then incorporated in and formed integral components of a complete machine tool.

Irrespective, therefore, of the close proximity of the dates on which the respective advisory classifications were made by the appraiser, as disclosed by the invoices, and of the fact that the parts designated in each of the invoices were not finally checked up for valuation purposes until their identities had apparently become lost in the complete machine tool as set up at the factory, the positive testimony of the examiner shows that said parts were separately considered and appraised in accordance with the advisory return thereof as noted on each invoice, although the notation may not have been actually written on the invoice until some time after the examination which determined the advisory classification of the goods had been made.

We therefore experience no hesitancy in dismissing from consideration the contention of the importer that his first shipment was withheld for classification purposes until after the arrival of the

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second, and that both shipments were then treated as an entirety. That assertion is obviously disproved by the decision of the collector in each instance as well as by the papers upon which the decisions were based.

Even if, despite the fact that the parts were imported in two distinct shipments, the collector had nevertheless withheld his classification thereof until the complete machine had been set up in place, it is perfectly clear that his action in so doing would not only do violence to all prevailing decisions construing the law on the subject of entireties, but would prove to be equally destructive of the right which the court, in the Irwin and Schoverling cases, *supra*, held to be well-settled doctrine, to wit, that merchants are at liberty so to manufacture and so to import their goods as to subject them to the lowest possible duties under the tariff laws.

Furthermore, if there is one principle of law which is so fundamentally established in customs adjudication that it may truly be said to be axiomatic, it is that imported merchandise must be considered for tariff purposes precisely in the condition in which it is imported. Whatever legitimate advantages importers may properly be entitled to avail themselves of in order to insure the payment of the lowest possible rates of duty on their goods, the rule that the condition of the importation must inevitably determine its tariff status is unassailable and in no instance may it be compromised or deviated from. Indeed, it is difficult to overestimate the prime importance of a strict application of that test, for upon the soundness and integrity of the principle involved may be said to rest the stability of the entire tariff structure. The purpose and object of the rule and the logic upon which it is based are best illustrated by the language of the United States Supreme Court in Worthington *v.* Robbins (139 U. S., 341), whereby it was declared that—

> In order to produce uniformity in the imposition of duties the dutiable classification of articles imported must be ascertained by an examination of the imported article itself in the condition in which it is imported.

We venture to say that no other rule of customs law has been more frequently reiterated, approved, and adopted by the courts and the board than that just cited, and we know of no case to which it more peculiarly and aptly applies than the present. That it transcends in importance, if not in the order of priority, any other appropriate rule, is unquestionable, since to ignore it would reduce to chaos the administration of the tariff, in so far at least as the classification of merchandise is concerned.

Nor can this cardinal principle of tariff construction be circumvented by an effort to prove that unavoidable and unprecedented conditions abroad interfered with the importer's intention to ship

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as an an entirety the parts in question, and that therefore a strict adherence to the rule should not obtain in this particular case.

It is true that the articles were ordered, made, bought, and intended to be shipped as entireties, but it is equally established by the record that they did not reach these shores in one shipment as integral parts of a complete machine tool, which is the only way in which under the law the importation could be classsified as a machine tool.

The importers cite the ruling of the board in G. A. 6489 (T. D. 27759) wherein it was held that a road roller, imported in a "knocked-down" condition, the various parts being packed in separate cases as the exigencies of transportation required, was nevertheless within the meaning of the law classifiable as an entirety, quoting the following language from the opinion of the board therein rendered:

> It is clear that if this roller had been imported already set up no question as to the propriety of its classification as an article of metal not specially provided for could arise, and we can not see that the circumstance that, for convenience and economy in transportation, it has been packed in parts, changes its character as a roller complete. It is well known that bulky machines are invariably thus packed, and that any other mode would be impracticable.

The facts there present, like those in hundreds of cases similarly decided, were entirely different from those in the case at bar. There, the importation consisted of a complete roller packed in 12 separate cases on the same vessels; here, the number of cases in each shipment represented only part of a complete machine tool.

Inasmuch, therefore, as there exists no special provision for parts of machine tools, and as the goods in question are composed entirely of metal, it follows as matter of law that they are properly relegated for tariff classification to the general provision in paragraph 167 for manufactures of metal not specially provided for, and we so hold.

The protests are therefore severally and in all respects overruled and the decision of the collector in each instance is affirmed.

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(T. D. 36853—G. A. 8000.)

*Mail importation—Jurisdiction of board.*

1. JURISDICTION OF BOARD OF UNITED STATES GENERAL APPRAISERS.

The Board of United States General Appraisers derives its power from paragraph N of section 3, tariff act of 1913, by which it is given jurisdiction to hear and decide a protest against the action of the collector in the liquidation of an entry, and determining the rate and amount of duty chargeable on imported merchandise; also, against the action of that official in imposing fees and exactions of whatever character upon the citizen growing out of the bringing of merchandise from a foreign country.

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2. TIME FOR FILING PROTEST.

Paragraph N of section 3, tariff act of 1913, requires that a protest against the action of the collector in assessing duty upon imported merchandise shall be filed within thirty days after but not before the ascertainment and liquidation of duties; that a protest against the action of the collector in imposing fees, charges and exactions shall be filed within fifteen days after the payment of the same. A protest, therefore, filed more than fifteen days after the payment of fees, charges, and exactions was not filed within the time provided by law, hence brings no cause of action before the Board of United States General Appraisers.

United States General Appraisers, New York, December 1, 1916.

In the matter of protests 808947, etc., of G. W. Sheldon & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York.

[Dismissed.]

*Crim & Wemple* (*William L. Wemple* of counsel) for the importers.

*Bert Hanson*, Assistant Attorney General (*John J. Mulvaney*, special attorney), for the United States.

Before Board 3 (WAITE and HAY, General Appraisers).

*Protest 808947 of G. W. Sheldon & Co.*

HAY, *General Appraiser:* Certain diamonds were forwarded from Switzerland by parcel post to G. W. Sheldon & Co., New York, for M. H. Mann & Co., diamond merchants of that city. The deputy collector stationed at the post office withheld the delivery of these diamonds upon the ground that they were nonmailable under the Universal Postal Convention. While the record is silent on this point, evidently the matter was called by the collector to the attention of the United States district attorney for the Southern District of New York, who, in a letter to the Secretary of the Treasury advised that the ends of justice did not require the seizure and forfeiture of the merchandise, but that the ends of justice would be subserved by the payment by the importers of the duties and a fine equal to 20 per cent of the amount of the duties. The recommendation of the United States district attorney was embodied in a letter of the Secretary of the Treasury to the collector of the port of New York, and, the collector was by the Secretary authorized to accept from the protestants an amount equal to the duty and a fine equal to 20 per cent of the amount of that duty. The protestants had, prior to this, offered to enter the merchandise, but this the collector refused to permit them to do. The protestants then paid the amount demanded by the collector, to wit, $4,827.21, the amount of the duty, which was the regular duty on diamonds, and 20 per cent of that duty in addition. Against the action of the collector in requiring them to pay this money to secure the possession of the diamonds this protest was filed.

The protestants claim that the collector exceeded his authority in exacting from them more than the regular duty provided by law for

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diamonds. The Assistant Attorney General moves to dismiss the protest upon the ground that the board has no jurisdiction.

The jurisdiction of this board, like the powers and duties of the collector and the Secretary of the Treasury, are entirely statutory. This board derives its powers from that provision of law which is now known as paragraph N of section 3, tariff act of 1913. It has no jurisdiction to try and decide any case or any question save such as come within the purview of this paragraph. Neither the collector nor the Secretary of the Treasury have any power or authority to collect money from the citizen or to do any act authority for which has not been given by law. Paragraph N of section 3, from which this board derives its jurisdiction and power, so far as the same has any bearing upon the question here under consideration, reads as follows:

N. That the decision of the collector as to the rate and amount of duties chargeable upon imported merchandise, or upon merchandise on which duty shall have been assessed, including all dutiable costs and charges, and as to all fees and exactions of whatever character (except duties on tonnage), shall be final and conclusive against all persons interested therein, unless the owner, importer, consignee, or agent of such merchandise, or the person paying such fees, charges, and exactions other than duties, shall, within 30 days after but not before such ascertainment and liquidation of duties, as well in cases of merchandise entered in bond as for consumption, or within 15 days after the payment of such fees, charges, and exactions, if dissatisfied with such decision imposing a higher rate of duty, or a greater charge, fee, or exaction than he shall claim to be legally payable, file a protest or protests in writing with the collector, setting forth therein distinctly and specifically, and in respect to each entry or payment, the reasons for his objections thereto, and if the merchandise is entered for consumption shall pay the full amount of the duties and charges ascertained to be due thereon. * * *

The remaining provisions of this paragraph relate to the payment of the fee and the transmission of the protest to the Board of United States General Appraisers. As was held by this board, almost 10 years ago, in American Express Co.'s case, G. A. 6552 (T. D. 27962), this paragraph as it appears in the law specifies two distinct and separate acts of the collector against which a protest may be filed. In that case we reviewed and distinguished prior decisions of this board and of the courts, and pointed out wherein the exact question had never before been passed upon or the all-embracing language of the statute drawn to the attention of the board or the courts. That case was, upon appeal, affirmed by the Circuit Court for the Southern District of New York in United States *v.* American Express Co. (154 Fed., 996; T. D. 28285). Since the decision of that case Congress has, in the reenactment of that same provision of law, made even more clear and distinct the conclusion reached in that decision, that this board has jurisdiction over two separate and distinct acts of the collector, one being the act in assessing duty upon imported merchandise, and the other that of

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imposing fees and exactions of whatever character upon the citizen growing out, of course, of the bringing in of merchandise from a foreign country. As we pointed out in the American Express Co.'s case, *supra*, the law provides two separate and distinct acts of the collector against which a protest may be filed—his decision as to the rate and amount of duties, a protest as to which was required at that time to be filed within 10 days after, but not before, the ascertainment and liquidation of duties, and a protest against the payment of fees and exactions, which must be filed within 10 days after the payment of the fees or exactions—clearly indicating that it was the intention of Congress to give to the board appellate jurisdiction over two separate and distinct acts of the collector. It will be noted that this has been made even more apparent in paragraph N, *supra*, wherein the time for appeal is now fixed at "thirty days after, but not before, such ascertainment and liquidation of duties," whereas it is fixed at "fifteen days after the payment of fees, charges, and exactions." It is difficult to see how the law-making body could have employed language more comprehensive, or all embracing to guarantee to the citizen the right to appeal from the collector to a judicial tribunal than was adopted in paragraph N. Save the exception carved out in the statute, to wit, duties on tonnage, we are unable to see how there could arise a case wherein the collector of customs could exact and receive money from the citizen relative to the bringing of merchandise within the limits of the United States; that his act in that respect would not be reviewable by this board and by the court, to which an appeal from this board is provided.

It is apparent from what has been said that we reach the conclusion that this board has jurisdiction of the subject matter here in controversy—that is, that the board has jurisdiction not only to pass upon the acts of the collector in the ascertainment and liquidation of duties, but also jurisdiction to pass upon the action of the collector in imposing fees, charges, and exactions. The $4,827.21 paid by the protestants to the collector in this case was paid, as the record shows, on the 31st day of May, 1916. This protest was filed, as shown by the same record, on the 30th day of June, 1916. If we should hold that the taking of this money from the protestants comes within the language of the statute which provides for "exactions of whatever character," as we think it does, it is apparent that the protest was not filed within the time fixed by that statute. If, on the other hand, we should take the view, which seems to be the view of the protestants' attorney, that the act of the collector was the collection of duties, we are confronted by the fact that the record shows that the entry was never filed with, or liquidated by, the collector. If we should, therefore, take the view that the offer of

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entry was tantamount to an entry, we must hold that the protest, the entry never having been liquidated, is filed too soon, as a protest against the ascertainment and liquidation of duties by the collector by express provision can not be filed before such ascertainment and liquidation. The mere collection of money by the collector does not constitute an ascertainment and liquidation. It may be an exaction, as we believe in this case it was. We must, therefore, hold that the board has jurisdiction of the subject matter and dismiss the protest, for the reason that the board acquired no jurisdiction of this case, the protest not having been filed within the time which the statute requires.

*Protest 809089 of J. G. Jacobson.*

While this case in facts differs in some respects from G. W. Sheldon & Co.'s case, above considered, we are clearly of the opinion that the money collected by the collector in this case was in the nature of a fee or exaction rather than duty. The payment in this case was made on June 9, 1916, and the protest filed on July 6, 1916. For the reasons given in the above decision of G. W. Sheldon & Co.'s case, the protest is dismissed.

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## *Abstracts of decisions of the Board of General Appraisers.*

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*Board 1*—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

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BEFORE BOARD 2, NOVEMBER 27, 1916.

**No. 40419.**—Protest 808434 of L. P. Seibold (Baltimore).

LITHOGRAPHIC PRINTS.—Merchandise classified as photographs at 15 per cent ad valorem under paragraph 329, tariff act of 1913, is claimed dutiable at 7 cents per pound as lithographic prints under paragraph 325.

Opinion by FISCHER, G. A. From the record it was found that the merchandise is properly classifiable as lithographic prints under paragraph 325, as claimed.

**No. 40420.**—Protest 802612 of Leon Rheims Co. (New York).

HATS IN CHIEF VALUE OF SILK NET.—Trimmed hats classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as silk wearing apparel at 50 per cent under paragraph 317.

Opinion by HOWELL, G. A. Certain of the merchandise was found to be composed in chief value of silk net and held properly dutiable at 50 per cent under paragraph 317. Protest sustained in part. United States v. Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388) followed.

**No. 40421.**—Protest 805694 of Morimura Bros. (New York).

LAMP SHADES.—Lamp shades composed of colored bamboo, classified at 25 per cent ad valorem under paragraph 175, tariff act of 1913, are claimed dutiable as manufactures of wood at 15 per cent under paragraph 176.

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Opinion by HOWELL, G. A. On the authority of G. A. 7804 (T. D. 35848) the lamp shades in question were held dutiable as manufactures of wood under paragraph 176, as claimed.

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BEFORE BOARD 1, NOVEMBER 29, 1916.

**No. 40422.**—Protest 797030 of T. Van Amringe & Son (New York).

PUMICE STONE.—The appraiser reports the merchandise to consist of pumice stone in lumps, the rough edges of which have been smoothed by being filed or rolled. It was classified at one-fourth of 1 cent per pound and is claimed dutiable at 5 per cent ad valorem under the provisions of paragraph 75, tariff act of 1913, or at 10 or 15 per cent under paragraphs 384, 385, and 386.

Opinion by MCCLELLAND, G. A. The pumice stone in question was found to be in lumps with smooth edges. It was held properly classified under the provision in paragraph 75 for partially manufactured pumice stone. Abstracts 19532 (T. D. 29229), Abstract 24179 (T. D. 31053), Abstract 24180 (T. D. 31053), and Gallagher *v.* United States (5 Ct. Cust. Appls., 59; T. D. 34095) followed.

**No. 40423.**—Protest 803628 of Wilfred Schade Forwarding Co. (St. Louis).

ARTIFICIAL FLOWERS.—Merchandise classified as artificial flowers at 60 per cent ad valorem under paragraph 347, tariff act of 1913, is claimed dutiable at 25 per cent under paragraph 368.

Opinion by MCCLELLAND, G. A. Protest unsupported; overruled.

**No. 40424.**—Protest 788251 of Arabol Manufacturing Co. (New York).

BITOCOL—GLUE—CHEMICAL COMPOUND.

BROWN, *General Appraiser:* This suit is brought to determine the proper classification of so-called "Bitocol." It was invoiced as glue powder and was classified as a chemical compound at 15 per cent under paragraph 5, act of 1913. It is claimed to be dutiable under the first part of paragraph 34, providing for "gelatin, glue, and glue size, valued not above 10 cents per pound, 1 cent per pound."

The testimony introduced by the importers shows that the merchandise is glue, or glue sizing, and that it is principally used as glue sizing in textile manufacture by mixing it with water. It is made from bones or other animal substance, with certain chemicals added. While the powder when mixed with water can be used for adhesive purposes like any glue, the addition of the chemical (as explained by the witness) "prevents the glue after it has been swallowed up in water from jellifying afterwards and makes cold-water soluble glue, allowing the user to use cold water instead of hot water, and keeps it liquid instead of having jelly after it cools down."

The testimony for the Government shows that the substance is prepared with certain chemicals which are in themselves chemical compounds.

We think the article is still glue, although it has added to it certain chemicals to facilitate its use by preventing jellification and permitting it to be mixed with cold water for use. The product is glue, and even if it be also a chemical compound the provision for glue is more specific than that for chemical compounds not specially provided for.

It should be noted that Abstract 33961 (T. D. 33833), wherein similar merchandise was held to be dutiable as a chemical compound, was decided upon a very meager record, while the record in the case at bar is more complete, showing more clearly the character and uses of the merchandise, and warrants the different conclusion reached herein.

Judgment is rendered for the protestant, sustaining the protest.

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CONCURRING OPINION.

McCLELLAND, *General Appraiser:* I concur in the conclusion that the collector's decision should be reversed and the protest therefore sustained.

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BEFORE BOARD 2, NOVEMBER 29, 1916.

**No. 40425.**—Protests 793298, etc., of Alexis Witte Cutlery Co. (New York).

RAZOR BLADES.—These protests are against the classification of razor blades as parts of razors at 55 per cent ad valorem under paragraph 128, tariff act of 1913.

Opinion by FISCHER, G. A. Protests unsupported; overruled.

**No. 40426.**—Protest 764087 of Dieckerhoff, Raffloer & Co. (New York).

PLATED HAIRPINS AND SAFETY PINS.—Hairpins and safety pins, composed of round steel wire and plated with gold or silver, classified at 50 per cent ad valorem under paragraph 167, tariff act of 1913, are claimed dutiable as articles of wire at 15 per cent under paragraph 114.

Opinion by FISCHER, G. A. On the authority of G. A. 7766 (T. D. 35645) the hairpins and safety pins in question were held properly classified under paragraph 167.

**No. 40427.**—Protests 760010, etc., of H. B. Claflin Co. et al. and protests 786326, etc., of James McCreery & Co. et al. (New York).

BEADED AND SPANGLED ARTICLES.—Beaded and spangled articles, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable at 50 per cent under paragraph 333.

Opinions by HOWELL, G. A. Upon stipulation of counsel merchandise found to be in chief value of beads, spangles, or beads and spangles, was held dutiable at 50 per cent under paragraph 333. Loewenthal *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464) and United States *v.* Gavin (7 Ct. Cust. Appls., —; T. D. 36804) followed.

**No. 40428.**—Protests 795007, etc., of Trippe, Barker & Co. (New York).

POLISHING CLOTHS—COMPLEXION CLOTHS—SUFFICIENCY OF PROTEST.—Merchandise reported by the appraiser to be complexion cloths, polishing cloths, and boot strips made from cotton velvet, classified at 40 per cent ad valorem under paragraph 257, tariff act of 1913, is claimed dutiable at 25 per cent under paragraph 264. A question arises as to the sufficiency of a protest filed by Trippe, Barker & Co. on an entry made in the name of Snow's United States Sample Express Co.

Opinion by COOPER, G. A. From an examination of the entry papers it was found that the protestant is the owner of the merchandise, and the protest was held sufficient. Polishing cloths made of cotton were held dutiable at 25 per cent under paragraph 264. Abstract 39050 followed. As to all other merchandise the protests were overruled.

**No. 40429.**—Protest 793291 of Knauth, Nachod & Kuhne (New York).

ICE BAGS—DRUGGISTS' SUNDRIES.—Ice bags composed of cotton and india rubber, classified as manufactures of cotton at 30 per cent ad valorem under paragraph 266, tariff act of 1913, are claimed dutiable as manufactures of india rubber or gutta percha, commonly known as druggists' sundries, at 15 per cent under paragraph 368.

Opinion by COOPER, G. A. From the report of the appraiser it was found that certain of the bags are composed in chief value of india rubber. These were

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held dutiable at 15 per cent under paragraph 368. The bags in chief value of cotton were held properly classified. Kenyon *v.* United States (4 Ct. Cust. Appls., 344; T. D. 33529) cited.

**No. 40430.**—Protest 791043 of B. Altman & Co. (New York).

FIGURED COTTON CLOTH.—Woven figured cotton cloth classified at 30 per cent ad valorem under paragraph 258, tariff act of 1913, is claimed dutiable under paragraphs 252 and 253. Chessboards and chessmen, packed together and treated as entireties, classified at 50 per cent under paragraph 341, are claimed dutiable under paragraph 176, 367, 368, or 369.

Opinion by COOPER, G. A. The woven figured cotton cloth was held dutiable under paragraph 252. United States *v.* Sherman (6 Ct. Cust. Appls., 271; T. D. 35501), affirming G. A. 7618 (T. D. 34858), followed. Protest overruled as to the chessboards and chessmen.

**No. 40431.**—Protests 776468, etc., of Snow's United States Sample Express Co. (New York).

FIGURED COTTON CLOTH.—Figured cotton fabrics classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913, are claimed dutiable under paragraph 252.

Opinion by COOPER, G. A. On the authority of G. A. 7618 (T. D. 34858), affirmed in United States *v.* Sherman (6 Ct. Cust. Appls., 271; T. D. 35501), figured cotton cloth was held dutiable under paragraph 252.

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BEFORE BOARD 3, NOVEMBER 29, 1916.

**No. 40432.**—Protest 784985 of Gallagher & Ascher (New York).

BENGER'S FOOD.—Benger's food, classified as a nonenumerated manufactured article under paragraph 385, tariff act of 1913, is claimed free of duty under the wheat products paragraph (644).

Opinion by HAY, G. A. On the record presented protest overruled without affirming the action of the collector.

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REHEARINGS GRANTED.

NOVEMBER 2, 1916.

**No. 40433.**—AMERICAN GOODS RETURNED.—Protest 798921 of A. A. Lindo & Co. Decided September 18, 1916. Not published.

NOVEMBER 14, 1916.

**No. 40434.**—LEATHER ARTICLES.—Protest 781858 of Mark Cross Co. Abstract 40249.

NOVEMBER 16, 1916.

**No. 40435.**—ALUMINUM TABLESPOONS.—Protest 800702 of Sears, Roebuck & Co. Abstract 40355.

NOVEMBER 21, 1916.

**No. 40436.**—ULTRAMARINE BLUE.—Protests 787815, etc., of J. A. Chambers. Abstract 39885.

NOVEMBER 23, 1916.

**No. 40437.**—DRAWNWORK HANDKERCHIEFS.—Protest 798489 of Sojur Ally. Abstract 40337.

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NOVEMBER 24, 1916.

**No. 40438.**—TOYS—HALLOWEEN FAVORS.—Protests 783749, etc., of O. G. Hempstead & Son et al. Abstract 40288.

**No. 40439.**—SHIP'S EQUIPMENT.—Protest 779309 of A. E. Outerbridge & Co. Abstract 40394.

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## (T. D. 36854.)

*Spruce gum.*

Spruce gum dutiable under paragraphs 36 and 386, tariff act of 1913, by similitude to chicle; if crude, at the rate of 15 cents per pound; if refined or advanced in value by drying, straining, or any other process or treatment whatever beyond that essential to the proper packing, at the rate of 20 cents per pound.

TREASURY DEPARTMENT, *December 4, 1916.*

SIR: The department duly received your letter of October 24, 1916, relative to the proposed change in practice in the classification of spruce gum.

In T. D. 36427 of May 12, 1916, the United States Court of Customs Appeals held certain spruce gum to be dutiable as a nonenumerated unmanufactured article under paragraph 385 of the tariff act of 1913. It does not appear, however, that the question of similitude to some enumerated article was considered, the court stating "no question of similitude is made in the case."

It further appears from the report submitted by the appraiser that spruce gum is used as a masticatory similar to chicle, and while various other gums or compounds are used as adulterants with chicle it does not appear that they are generally used as basic materials.

The department therefore concurs in the views that spruce gum, by virtue of the similitude clause of paragraph 386 of the tariff act of 1913, is dutiable under paragraph 36 of the said act by similitude to chicle; if crude, at the rate of 15 cents per pound; and if refined or advanced in value by drying, straining, or any other process or treatment whatever beyond that essential to the proper packing, at the rate of 20 cents per pound. Note also Abstract 22265 (T. D. 30165), wherein the classification of certain vegetable gum by similitude as chicle under the act of 1897 was affirmed.

You will be governed accordingly on merchandise of the character in question imported or withdrawn from warehouse 30 days after the date hereof.

Respectfully, ANDREW J. PETERS,
(68188.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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## (T. D. 36855.)

### *Schedule for hearings by the Board of General Appraisers.*

Schedule for hearings of cases by the Board of United States General Appraisers at ports other than the port of New York for the calendar year 1917.

TREASURY DEPARTMENT, *December 5, 1916.*

*To officers of the customs and others concerned:*

The appended schedule of hearings by the Board of United States General Appraisers is published for your information.

(34583.) ANDREW J. PETERS, *Assistant Secretary.*

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*Dockets for the hearings of cases by the boards of United States general appraisers and individual general appraisers at ports other than New York, 1917.*

OFFICE OF THE BOARD OF UNITED STATES GENERAL APPRAISERS,
*641 Washington Street, New York, December 2, 1916.*

Under and by virtue of the authority conferred by the customs administrative act of 1890, as amended by the act of August 5, 1909, reenacted in the tariff act of October 3, 1913, and for the purpose of hearing appeals in both classification and reappraisement cases at ports other than the port of New York, the following dockets therefor are hereby promulgated:

*1917 O. P. dockets.*

| Port. | Jan. | Feb. | Mar. | Apr. | May. | June. | Sept. | Nov. | Dec. |
|---|---|---|---|---|---|---|---|---|---|
| Baltimore | 24 | | | | 23 | | 26 | | 12 |
| Philadelphia | 25 | | | | 24 | | 27 | | 13 |
| Providence | | 28 | | | 23 | | 26 | | 12 |
| Boston | | | 1 | | 24 | | 27 | | 13 |
| Chicago | | 8 | | | | 28 | | 1 | |
| Newport News | | | 6 | | | | | | |
| Tampa | | | 9 | | | | | 9 | |
| New Orleans | | | 13 | | | | | 13 | |
| Galveston | | | 16 | | | | | 16 | |
| Buffalo | | | | 3 | | | 25 | | |
| Cleveland | | | | 5 | | | 27 | | |
| Detroit | | | | 7 | | | 29 | | |
| Pittsburgh | | | | | 2 | | | 7 | |
| Cincinnati | | | | | 4 | | | 9 | |
| St. Louis | | | | | 8 | | | 13 | |
| Kansas City | | | | | 11 | | | 16 | |
| Seattle | | | | | 17 | | | 8 | |
| Portland | | | | | 19 | | | 10 | |
| San Francisco | | | | | 24 | | | 15 | |
| Los Angeles | | | | | 31 | | | 22 | |
| Minneapolis | | | | | 12 | | | 3 | |
| St. Paul | | | | | 12 | | | 3 | |

Whenever it shall appear to the president of the Board of General Appraisers that there are not pending at any port in the schedule herein a sufficient number of cases to warrant the visit of a general appraiser, or for other sufficient cause, he will, after due notice, extend the time appointed for such dockets to a future day.

Whenever a docket day herein fixed falls upon a holiday such docket will be called upon the day following.

Said dockets and each of them will be called at the hour designated in the notice of hearing of the day appointed in the above schedule, and all pending cases be heard or set for trial as the general appraiser in attendance may direct.

Upon transmittal of records from ports other than New York to the Board of General Appraisers in cases in which local hearings are to be had the sample will, after being

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properly carded (Form Cat. No. 183 or 184) for identification with such records, be retained in the local office for use at such hearings, and thereafter be immediately indorsed with the board numbers and transmitted with such records to the Board of General Appraisers.

JERRY B. SULLIVAN,
*President General Board of United States General Appraisers.*

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(T. D. 36856.)

*Bottles.*

Bottles printed or sand-blasted with the name of manufacturer, country of production, or trade-mark and bottles with printed seal on glass superimposed upon the bottles after molding and before cooling dutiable at the rate of 45 per cent ad valorem under paragraph 84 of the tariff act of 1913, rather than at 30 per cent ad valorem under paragraph 83 of the said act.

TREASURY DEPARTMENT, *December 5, 1916.*

SIR: The department duly received your letter of October 23, 1916, relative to the proposed change in practice in the classification of certain bottles.

It appears that it has been the practice to classify bottles which, in the molding process, are plain lettered at 30 per cent ad valorem under paragraph 83 of the tariff act of 1913, and those that are decorated with trade-mark design and manufacturer's name or letter at 45 per cent ad valorem under paragraph 84, following T. D. 34888 and T. D. 35167.

The opinion is now expressed by the appraiser at your port, concurred in by you, that the classification should be as follows:

(1) Bottles plain lettered in the mold, not being printed within the usual meaning of the word, as plain glass bottles under paragraph 83 at 30 per cent ad valorem (T. D. 31969).

If molded with ornamental or decorative lettering or trade-mark, under paragraph 84 at 45 per cent ad valorem (T. D. 34888 and T. D. 35167).

(2) Molded bottles subjected to any superadded processes specified in paragraph 84, plain or decorative in effect, under paragraph 84 at 45 per cent ad valorem (T. D. 33589).

The pertinent provisions of paragraph 84 of the tariff act of 1913 read as follows:

Glass bottles * * * ornamented or decorated in any manner, or cut, engraved, painted, decorated, ornamented, colored, stained, silvered, gilded, etched, sand-blasted, frosted, or printed in any manner, or ground, * * * n. s. p. f., filled or unfilled, * * * 45 per cent ad valorem.

This provision and the corresponding one under the act of 1909 (par. 98) appear to have been framed with the intent to include therein all articles that have been (*a*) ornamented or decorated in

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the mold or (*b*) subjected to any of the processes indicated, whether or not they constitute ornamentation or decoration (T. D. 32170).

In view of the decisions mentioned, the department concurs in the views expressed relative to the classification, and you will be governed in accordance therewith.

As this involves a change in practice upon (*a*) bottles printed or sand-blasted with name of manufacturer, country of production, or trade-mark, and (*b*) bottles with printed seal on glass superimposed upon the bottles after molding and before cooling, you will impose the higher rate on such bottles only when imported or withdrawn from warehouse 30 days after the date hereof.

Respectfully, ANDREW J. PETERS,
(94234.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36857.)

*Drawback on aeroplanes, etc.*

**Drawback on flying machines manufactured by the Curtiss Aeroplane Co., of Buffalo, N. Y., with the use of imported sheet aluminum, linen, and ball bearings.**

TREASURY DEPARTMENT, *December 6, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on flying machines manufactured by the Curtiss Aeroplane Co., of Buffalo, N. Y., with the use of imported sheet aluminum, linen, and ball bearings.

The allowance shall not exceed the quantity of imported material of each kind used in the manufacture of the exported flying machines, as shown by the sworn statement of the manufacturers, dated November 13, 1916, transmitted herewith, the allowance in the case of imported aluminum and linen to be reduced according to the quantity of imported material which the value of the corresponding waste will replace.

Drawback may be allowed under these regulations on flying machines exported on and after December 21, 1915.

Supplemental sworn schedules covering other styles of flying machines may be filed, and upon verification of such supplemental schedules drawback may be allowed on flying machines manufactured in accordance therewith.

Respectfully, ANDREW J. PETERS,
(100723-2.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36858.)

*Plant quarantine act—Admission of Canadian potatoes.*

**Collectors to be governed by plant quarantine decision No. 12 and instructions thereunder of the Department of Agriculture relative to the admission of potatoes from Canada.**

TREASURY DEPARTMENT, *December 6, 1916.*

*To collectors and other officers of the customs:*

Your attention is invited to copies of the following: (1) Plant quarantine decision No. 12, dated November 25, 1916; (2) circular entitled "Conditions of entry of Canadian potatoes into the United States," dated November 27, 1916; (3) shipper's certificate of soundness, issued by the Department of Agriculture, which have been forwarded to you by mail and by which you will be governed.

In accordance with a request of the Secretary of Agriculture, you are instructed that, after indorsing the importers' or brokers' reports with the words "Shipper's certificate of soundness received," you should sign and forward such reports to the Secretary of Agriculture.

T. D. 36061 of January 12, 1916, is amended accordingly.

(92655-19.) ANDREW J. PETERS, *Assistant Secretary.*

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(T. D. 36859.)

*Quinine glycerophosphate.*

**Appeal directed from decision of the Board of United States General Appraisers of November 17, 1916, G. A. 7989 (T. D. 36819), involving the classification of certain quinine glycerophosphate.**

TREASURY DEPARTMENT, *December 7, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 2d instant, inviting attention to the decision of the Board of United States General Appraisers of November 17, 1916, G. A. 7989 (T. D. 36819), wherein certain quinine glycerophosphate, which had been assessed with duty at the rate of 25 per cent ad valorem under the provisions of paragraph 18 of the tariff act of October 3, 1913, for "glycerophosphoric acid and salts and compounds thereof," was held by the board to be free of duty under the provisions of paragraph 584 of the said act for "quinia, sulphate of, and all alkaloids or salts of cinchona bark."

You are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ANDREW J. PETERS,

(97670.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

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(T. D. 36860.)

*Drawback on olive oil.*

T. D. 33891 of November 19, 1913, providing for drawback on purified, filtered, and clarified oilve oil produced by H. J. Heinz & Co., of New York, N. Y., extended to cover such olive oil produced by the Garibaldi Co., of Chicago, Ill., from olive oil imported in a raw and unfiltered state.

TREASURY DEPARTMENT, *December 8, 1916.*

SIR: The department's regulations of November 19, 1913 (T. D. 33891), providing for the payment of drawback on olive oil, purified, filtered, and clarified, by H. J. Heinz & Co., of New York, N. Y., from olive oil imported in a raw and unfiltered state, are hereby extended to cover the manufacture or production by the Garibaldi Co., of Chicago, Ill., of olive oil filtered and clarified from olive oil imported in a raw and unfiltered state.

The sworn statement of the manufacturers, dated November 27, 1916, is transmitted herewith for filing in your office.

Drawback may be allowed under these regulations on olive oil exported on and after November 16, 1916.

Respectfully, ANDREW J. PETERS,
(96329-2.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Chicago, Ill.*

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(T. D. 36861.)

*Drawback on hats.*

Drawback on blocked and blocked and trimmed hats manufactured by the Brodkin Straw Works, of New York, N. Y., with the use of imported crude shapes, and on hats manufactured by the same firm with the use of imported straw braid.

TREASURY DEPARTMENT, *December 9, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on blocked and blocked and trimmed straw hats manufactured by the Brodkin Straw Works, of New York, N. Y., with the use of imported crude shapes, and on straw hats manufactured by the said firm with the use of imported straw braid after the same has been bleached, dyed, colored, or stained for their account by the R. H. Comey Co., of Camden, N. J., and Brooklyn, N. Y., in accordance with the provisions of T. D. 35830 of October 26, 1915.

A manufacturing record shall be kept, showing, in the case of each lot of hats manufactured with the use of imported straw braid, the number and style of hats manufactured, and the quantity and iden-



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tity of the imported straw braid used in the manufacture thereof. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

In the case of straw hats manufactured with the use of imported braid, the allowance shall not exceed the quantity of imported materials used in the manufacture of the exported hats, as shown by the sworn abstract from the manufacturing record, and in the case of blocked and blocked and trimmed hats manufactured from imported crude shapes the allowance shall not exceed one imported crude shape for each blocked or blocked and trimmed hat exported.

The sworn statement of the manufacturers, dated November 28, 1916, is transmitted herewith.

Drawback may be allowed under these regulations on articles covered thereby exported on or after October 3, 1916.

Respectfully, ANDREW J. PETERS,
(100877-14.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36862.)

*Drawback on ornamented parts of slippers or shoes, etc.*

**Drawback allowed on parts of slippers or shoes or other articles of felt or other fabrics ornamented or decorated by painting or stenciling thereon decorative designs.**

TREASURY DEPARTMENT, *December 9, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on parts of slippers or shoes or other articles of felt or other fabrics, ornamented or decorated by painting or stenciling designs thereon, manufactured or produced by the Vernart Manufacturing Corporation, of New York, N. Y., with the use of cloth slipper parts, banners, or other articles of felt or other fabrics.

A manufacturing record shall be kept in accordance with the sworn statement of the manufacturers, dated November 27, 1916, which is transmitted herewith for filing in your office, which shall show, in addition to the usual import data, in the case of each lot of slipper or shoe parts or other articles or fabrics, ornamented or decorated by painting or stenciling designs thereon, the lot number and date of manufacture thereof and the number of pieces of the various fabrics used. A sworn abstract from the manufacturing record shall be filed with the drawback entry.

The allowance shall not exceed the quantities of material used in the manufacture of the decorated fabrics, as shown by the sworn abstract.

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Drawback may be allowed under these regulations on the decorated fabrics exported on and after November 9, 1916.

Respectfully, ANDREW J. PETERS,
(105720.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36863.)

*Baseballs—Marking country of origin.*

**Imported baseballs, whether bearing any marking or not, are required to be marked to indicate the country of origin under subsection 1 of paragraph F of section 4 of the existing tariff act.**

TREASURY DEPARTMENT, *December 11, 1916.*

SIR: The department refers to your letter of the 25th ultimo in regard to the marking to indicate the country of origin of imported baseballs. You state that it is the practice at your port to pass baseballs which are not marked in any manner, packed 1 dozen in a carton, as legally marked if the carton is marked with the name of the country of origin.

Subsection 1 of paragraph F of section 4 of the existing tariff act provides that all imported articles capable of being marked without injury shall be marked in legible English words so as to indicate the country of origin. In the opinion of the department, baseballs, irrespective of whether they bear any marking, are capable of being marked without injury with the name of the country of origin, and that therefore the marking of the cartons is not sufficient. You will be governed accordingly.

In view of your practice, however, baseballs imported within 30 days from date hereof will be released when the cartons are duly marked.

Respectfully, ANDREW J. PETERS,
(66174-11.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36864.)

*Drawback on braids and hats.*

**Drawback allowed on braids and straw and hemp hats manufactured by H. Kram & Co., of New York, N. Y., with the use of imported straw braids, artificial silk yarn, visca, artificial horsehair, tussa, tinsel wire, and hair braids.**

TREASURY DEPARTMENT, *December 11, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations

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(chapter 18 of the Customs Regulations of 1915), on braids, straw and hemp hats manufactured by H. Kram & Co., of New York, N. Y., with the use of straw braids, artificial silk yarn, visca, artificial horsehair, tussa, tinsel wire, and hair braids.

A manufacturing record shall be kept in accordance with the sworn statment of the manufacturers, dated November 1, 1916, which is transmitted herewith for filing in your office, which will show, in addition to the usual import data, the lot number of each lot of braids and hats manufactured for exportation with benefit of drawback, the quantities of the different materials used in the manufacture of the braids and hats, and the quantity of braids and the number and style of hats produced. A sworn abstract from the manufacturing record shall be filed with the drawback entry.

Drawback may be allowed under these regulations on braids and hats exported on and after December 31, 1915.

Respectfully, ANDREW J. PETERS,
(104471.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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## (T. D. 36865.)

### *Drawback on cans.*

**Drawback on 1 and 5 gallon cans manufactured by the Standard Oil Co. of New Jersey with the use of imported lead.—T. D. 34924 of November 27, 1914, revoked.**

TREASURY DEPARTMENT, *December 11, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on 1 and 5 gallon cans manufactured by the Standard Oil Co. of New Jersey at their Bayonne, N. J., factory with the use of solder manufactured with the use of imported pig lead or pig lead produced from imported ores or with the use of such materials in combination with domestic lead and other metals.

A record shall be kept, showing, in the case of each lot of solder produced, the lot number and date of production thereof, the quantity and identity of each class of duty-paid lead, and the quantity of each kind of other material, including domestic lead, used, and the quantity of solder produced. There shall also be kept a daily manufacturing record, showing, in the case of each kind of can manufactured, the number produced and the quantity and identity of the solder used in the manufacture thereof. A sworn abstract from such records and a certificate of manufacture shall be filed covering each period of manufacture, which shall not exceed one month in duration, and the

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exported cans shall be identified in the drawback entry with the period of manufacture in which produced.

The quantity of duty-paid lead which may be taken as the basis for the allowance of drawback shall not exceed the quantity used in the manufacture of cans of the kind exported, as shown by the abstract from the manufacturing record. In liquidation, the solder identified in the abstract from the manufacturing record shall be applied to the exported cans in order from the lowest to the highest drawback accruing thereon.

Drawback may be allowed under these regulations on cans exported on or after July 7, 1916.

T D. 34924 of November 27, 1914, is hereby revoked.

Respectfully, ANDREW J. PETERS,
(98979–1.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36866—G. A. 8001.)

*Appraiser's report.*

1. APPRAISER'S REPORT AS EVIDENCE.

The statement of the appraiser in his report that certain merchandise, which had been assessed as manufactures of marble or alabaster under paragraph 98, tariff act of 1913, would now be classified as sculptures under paragraph 376, as claimed by protestants, establishes no basis, either in fact or in law, for a decision by the Board of General Appraisers in derogation of the finding of the collector; and this is true whether the report of the appraiser has been adopted by the collector or not.—G. A. 7650 (T. D. 34998) followed.

2. SAME—ALABASTER LAMPS—ENTIRETIES.

The question whether certain alabaster lamps are entireties dutiable as sculptures under paragraph 376, tariff act of 1913, must be determined by the board on evidence presented before it.

United States General Appraisers, New York, December 4, 1916.

In the matter of protests 767573-54141, etc., of Marshall Field & Co. *et al.* against the assessment of duty by the collectors of customs at the ports of Chicago and New York.

[Affirmed.]

Importers not represented by counsel.
*Bert Hanson*, Assistant Attorney General, for the United States.

Before Board 3 (WAITE and HAY, General Appraisers).

*Protests 767573, 767577–8, and 769884 of Marshall Field & Co.*

WAITE, *General Appraiser:* In these cases certain marble bowls, benches, etc., have been assessed at 45 per cent ad valorem as manufactures of marble under paragraph 98, tariff act of 1913, and are claimed to be dutiable at 15 per cent ad valorem under paragraph

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376, which provides for "works of art, including * * * statuary, sculptures, or copies, replicas or reproductions thereof."

Indorsed on the backs of the jackets, as a part of the record of proceedings before the board, there appears the following notation (it being the same in each case):

*June 28, 1916.*—Submitted on record by importers. Government objects to incorporation of appraiser's report as stating a conclusion of law and as not having been filed in time.

The finding of the collector was that the goods were dutiable under paragraph 98, as above stated. In his letter of transmittal no reference whatever is made to the report of the appraiser. In protest 767573 the appraiser's report is in the following language (which is a fair sample of the report in all the cases so far as the question at issue is concerned):

The merchandise consists of sculptured marble benches and bowls. In view of department's construction of paragraph 376, act of 1913, contained in T. D. 33985 and T. D. 34438, the bowls would now be returned for duty under paragraph 376 at 15 per cent ad valorem. The benches are dutiable at 45 per cent ad valorem under paragraph 98, which specially provides for monuments, benches, and vases.

The importers have evidently submitted their case with the view of having this suggestion of the appraiser followed in derogation of the finding of the collector. Had it been referred to by the collector in his report to the board as having been considered by him, as was the case in Coste's case, G. A. 7837 (T. D. 36046), we do not think it would have been sufficient upon which to base a finding contrary to the finding of the collector. In our view it has no force whatever to determine a question of fact, and can not be considered as establishing a conclusion of law. We cite with approval the language of General Appraiser Fischer in the case of Sears, Roebuck & Co., G. A. 7650 (T. D. 34998), where the report of the appraiser was, in effect, the same as in this case. In that decision the board used the following language:

Notwithstanding the positive declaration of the local appraiser that "the claim of the protestant is well founded," we must confess that we are utterly unable to discover anything in the record before us which would warrant us in so holding. Neither do we for a moment concede that any apparent conclusion on the part of an appraiser with respect to the dutiable classification of an imported article bears with it any sanction of law, nor that it is even entitled to be credited with any legal effect whatever. So far as the classification of imported merchandise is concerned, such a declaration by an appraising officer, whose sole duty under the statute is to ascertain and determine the value of such merchandise, must be deemed to be absolutely meaningless, as it can not be considered as a finding of fact nor treated as a conclusion of law.

We therefore conclude that there is nothing in the record in this case upon which we can make a finding contrary to that made by the collector.

The protests are overruled.

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*Protests 797870 and 802336 of George Borgfeldt & Co.*

The goods in question are alabaster lamps, consisting of carved standards, according to the report of the appraiser, with bowls or shades also of alabaster, but which we are led to believe are not so elaborately carved as the standards. In a previous decision of the board (*In re* Borgfeldt & Co., Abstract 38174) it was held that carved alabaster lamps consisting of standard with bowl or globe at the top, should be treated as entireties and assessed as sculptures under paragraph 376, tariff act of 1913. In this case the appraiser reports in his advisory capacity that the goods are like those covered by Abstract 38174, *supra*, and concludes that they should be assessed, as in that case, as entireties. The collector, however, assessed the bowls as manufactures of alabaster under paragraph 98, tariff act of 1913, and the standards as sculptures under paragraph 376, but in his communication to the board transmitting protest 797870 he states that he stands ready to reliquidate in accordance with the finding in Abstract 38174 if the board so orders. It is not within the function of the board to order the collector except through a decision, which must be based on the record in the case, and whether an article is a work of art or sculpture must be determined as a matter of fact and law by the board. We do not think we are authorized, upon the suggestion of the appraiser or upon the approval of the collector contrary to his solemn classification, to determine whether an article is a work of art or an entirety without proof other than that furnished by such report of the appraiser and sanction of the collector. The claim of the importers is that these lamps are entireties, and that they are characterized by the standards, and that therefore the entireties are sculptures, dutiable under paragraph 376. The board, however, can not find that an article is sculpture or a work of art simply because it resembles some other article, or is thought to resemble it by some other person. Proof of that fact, or proof in this case that these goods are works of art and entireties, should have been presented by the importers to the board by an exhibition of the articles themselves and testimony as to their use and the relations of their parts. We conclude, therefore, that the importers have not made out their contention that these lamps should be assessed as entireties under paragraph 376.

The protests are overruled.

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(T. D. 36867—G. A. 8002.)

*Gelatin flakes—Waste.*

1. WASTE.

Waste in the tariff sense is refuse material which is unfit for use as the article from which a manufacture has been made, and which is not a by-product capable of use as a separate manufacture. In other words, it has lost its marketable quality as the original article and not attained the position of a new manufacture thereof.

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2. GELATIN FLAKES.

Therefore, minute, circular, flakelike pieces of gelatin, made as a by-product during the manufacture of gelatin spangles, and used for glueing on certain articles to produce a brilliant surface, are properly classified as a manufacture of gelatin under paragraph 34, act of 1913, and not as waste under paragraph 463.

## United States General Appraisers, New York, December 4, 1916.

In the matter of protest 794761 of D. C. Andrews & Co. (Inc.) against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

*E. L. Vrooman* for the importers.

*Bert Hanson*, Assistant Attorney General (*John R. Rafter*, special attorney), for the United States.

Before Board 1 (MCCLELLAND, SULLIVAN, and BROWN, General Appraisers; MCCLELLAND, G. A., concurring.)

BROWN, *General Appraiser:* This suit was brought to determine the correct classification of certain gelatin flakes, or thin, round, minute disks of gelatin. They were classified by the collector as a manufacture of gelatin under paragraph 34, act of 1913, reading:

34. Gelatin, glue, and glue size, valued not above 10 cents per pound, 1 cent per pound; valued above 10 cents per pound and not above 25 cents per pound, 15 per centum ad valorem; valued above 25 cents per pound, 25 per centum ad valorem; manufactures of gelatin or manufactures of which gelatin is the component material of chief value, 25 per centum ad valorem * * *.

The protest reads in part:

We claim that the assessment of duty on the merchandise at 25 per cent is erroneous for the reason that the merchandise consists of cuttings from the center of gelatin spangles, which is the waste product and therefore properly dutiable at 10 per cent as waste not specially provided for, paragraph 384.

We find from an inspection of the samples and from the testimony taken at the trial as follows:

(1) The merchandise consists of minute, thin, circular, flakelike pieces of gelatin.

(2) It is apparently cut (although the evidence is a little indefinite on this point) from the centers of gelatin spangles to permit the passage of the needle and thread through which the gelatin spangles are strung, the spangles from which it is so obtained being also in evidence as an illustrative exhibit.

(3) It is used for glueing to surfaces, for instance, hatpins, or hatpin molds, to give a glittering effect.

Assuming that (as claimed by the protestant) this merchandise is produced in the manufacture of spangles and is a by-product of that operation, the question remains whether it is a manufacture of gelatin or waste in the tariff sense.

Waste is refuse material which is unfit for use as the article from which a manufacture has been made, and which is not a by-product capable of use as a separate manufacture. In other words, it has

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lost its marketable quality as the original article and not attained the position of a new manufacture thereof.

Here we have an article which presumably could be melted up and made into gelatin articles such as spangles, and which is used as a separate distinct manufacture of gelatin as a covering to produce a glittering effect.

Judge Fischer, in the case of Schrader & Ehlers, G. A. 4806 (T. D. 22602; 3 Treas. Dec., 914), held that rubber dust, produced by the grinding and sawing of hard-rubber articles during the process of manufacture of such articles and fit only for remanufacturing, was waste under paragraph 463, act of 1897, because it was neither crude india rubber nor a manufacture thereof.

See also Judge Fischer's holding that the offal produced in cutting up sheet tin is waste, in the case of P. McGettrick, G. A. 5076 (T. D. 23518; 5 Treas. Dec., 105).

These two cases illustrate what real waste is as differing from the article here in controversy. The following language at the conclusion of the opinion in the latter case also illustrates the distinction:

> This case also differs from the case passed upon in G. A. 4980, wherein the board held that scrap platinum, while in the nature of waste, was entitled to free entry under paragraph 642, which provided for "platinum, unmanufactured," a provision more specific than for waste not otherwise provided for. It also differs from the case passed upon in G. A. 5030, wherein the board held that small pieces of mica, produced in sorting and trimming mica after it leaves the mine, was still mica and dutiable as such, never having lost its character as mica. It also differs from Seeberger *v.* Castro (153 U. S., 32) wherein the Supreme Court held that clippings from the ends of cigars and pieces broken from tobacco, in their nature waste, were dutiable under a provision for tobacco, unmanufactured.

In Standard Varnish Works *v.* United States (59 Fed., 456), Judge Lacombe, speaking for the Circuit Court of Appeals, Second Circuit, affirmed the board in holding that candle tar, a residuum or by-product in the manufacture of candles, was a manufactured article and not waste; that it was a new creation entirely distinct from what is was before, and marketable as such, just as these small flakes are marketable for use in producing a glittering effect as a manufacture of gelatin.

Judge Somerville, in Vandiver's case, in the Synopsis of Treasury Decisions (1897), page 311, G. A. 3818 (T. D. 17943), a case closely analogous to the one at bar, held that certain thin sheets or pieces of the solid compound of pyroxylin, left after cutting by a steel cutter so as to remove a circular disk varying in size with the area of each sample, were still pyroxylin and capable of manufacture as such, and therefore not waste, stating:

> The term "waste" has been recently defined by the Supreme Court of the United States as it was used in the tariff act of 1883, and that court has held that the word will be presumed to be used in the ordinary sense of refuse, or material that is unmerchantable, and used for purposes for which merchantable material of the same class is unsuitable. Patton *v.* United States (159 U. S., 500).

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After referring to various paragraphs of the tariff act where the term is used, Mr. Justice Brown observed:

The prominent characteristic running through all these definitions is that of refuse, or material that is not susceptible of being used for the ordinary purposes of manufacture.

This view was followed by this board *In re* Allerton Lubricant Co., G. A. 3328, when "scrap mica" was held not to be "waste" within the meaning of said paragraph 362, and is in harmony with the general principles announced by the Circuit Court of Appeals in the case of Standard Varnish Works *v.* United States (59 Fed., 456).

For the above reasons, judgment is rendered for the Government overruling the protest.

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CONCURRING OPINION.

McCLELLAND, *General Appraiser:* I concur in the conclusion that the merchandise involved is a manufacture of gelatin, properly assessed with duty by the collector, and that the protest should be overruled.

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## *Abstracts of decisions of the Board of General Appraisers.*

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*Board 1*—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

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BEFORE BOARD 1, DECEMBER 1, 1916.

**No. 40440.**—Protests 758427, etc., of Merck & Co. (New York).

PHOSPHOROUS PENTOXIDE—PHOSPHORIC ANHYDRIDE.

BROWN, *General Appraiser:* This suit is brought to determine the proper classification of phosphoric anhydride or phosphorous pentoxide. It was classified under the provision in paragraph 1, act of 1913, for "all other acids and acid anyhdrides not specially provided for in this section, 15 per centum ad valorem." Protest 758427 also covers the same merchandise, put up in packages of less than 2½ pounds gross weight, which was classified under paragraph 17 at 20 per cent ad valorem as a chemical compound so packed.

The claim is that the merchandise is free under paragraph 387 as "phosphoric acid."

The record in protest 705519 was incorporated as part of the record in this case. The testimony in the case at bar shows that there has been no change in the commercial practice, as shown in the former record, of selling and treating this substance in the trade catalogues and circulars under the general head of phosphoric acid.

In the case of Merck & Co., G. A. 7695 (T. D. 35190; 28 Treas. Dec., 329) covering protests 705519, etc., we held that this phosphoric anhydride was free of duty as phosphoric acid under paragraph 482 of the act of 1909, and was not dutiable under paragraph 3 of that act as a chemical compound, "in the absence of language in the act of 1909 distinguishing acids from anhydrides for purposes of classification thereunder."

In the case of Heller & Merz, G. A. 7819 (T. D. 35914; 29 Treas. Dec., 559), involving the classification of phthalic acid anhydride under the act of 1913, we said:

It would appear from Judge Townsend's findings of fact in Heller & Merz Co. *v.* United States (124 Fed., 299) and the findings of the board in G. A. 4824 (T. D.

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22664) that the chemical material classified in those cases, known in commerce as phthalic acid, was not an acid in its strict chemical sense, but was this anhydride. Therefore, if we do not hold it free under paragraph 387, the provision in the free list for phthalic acid would have no meaning as affecting the general trade and commerce of the country, but at most could only apply to the chemically pure phthalic acid used in laboratories as a reagent for scientific purposes. To so hold would, indeed, be holding that our legislators were chemists and were not dealing with the affairs of commercial men.

Following the same principle here, we think that Congress was dealing with the commercial substances known as phosphoric acid (which included the anhydride here in dispute) in enacting the provision for "phosphoric acid" (paragraph 387 of the free list), which, in view of this conclusion, more specifically describes the merchandise in dispute than the general provision for acid anhydrides in paragraph 1. The merchandise classified under paragraph 17 is also free under paragraph 387 following the case of Morgenstern, G. A. 7623 (T. D. 34863; 27 Treas. Dec., 346), wherein we held that the first part of paragraph 17 was limited in its application to "articles on the dutiable list."

Judgment is therefore rendered for the importer sustaining the protests. * * *

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BEFORE BOARD 3, DECEMBER 1, 1916.

**No. 40441.**—Protest 779309 of A. E. Outerbridge & Co. (New York).

SHIP'S EQUIPMENT.

HAY, *General Appraiser:* The Assistant Attorney General and the importers have entered into a stipulation to the effect that the merchandise involved in this protest consists of parts of a marine engine only, and that all said merchandise was incorporated in and formed a part of said engine. These being now the established facts in the case, the protest is sustained in accordance with the views expressed by the Court of Customs Appeals in United States *v.* Outerbridge & Co. (7 Ct. Cust. Appls., —; T. D. 36511). The collector will accordingly reliquidate the entry, assessing duty under paragraph 165 on the merchandise as a steam engine.

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BEFORE BOARD 1, DECEMBER 4, 1916.

**No. 40442.**—Protests 765161, etc., of W. J. Dean (St. Louis).

ICHTOSAN—ICHTHYOL.

BROWN, *General Appraiser:* This suit involves the construction of paragraph 17, act of 1913, and whether or not certain of the merchandise is within the meaning of the provision for ichthyol in paragraph 561 of the free list.

Paragraph 17 reads:

17. Chemical and medicinal compounds, combinations and all similar articles dutiable under this section, except soap, whether specially provided for or not, put up in individual packages of two and one-half pounds or less gross weight (except samples without commercial value) shall be dutiable at a rate not less than 20 per centum ad valorem: *Provided,* That chemicals, drugs, medicinal and similar substances, whether dutiable or free, imported in capsules, pills, tablets, lozenges, troches, ampoules, jubes, or similar forms, shall be dutiable at not less than 25 per centum ad valorem.

Paragraph 561 provides for "oils" and among those enumerated is "ichthyol."

*Protest 765161.*—The merchandise in case 11 (acid diethylbarblturic), classified at 25 per cent under the last clause of paragraph 17, is claimed to be dutiable at 20 per cent under the first clause of that paragraph.

As to this merchandise, the evidence shows that it was packed in 1-ounce paper cartons. We therefore hold the same dutiable at 20 per cent under the first part of paragraph 17, as claimed, and the protest is sustained to that end.

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The merchandise (ichtosan) in case 12 was also classified at 25 per cent under the last clause of paragraph 17 and is claimed to be free under paragraph 561 as ichthyol.

The action of the classifying officer is presumptively correct, and the essential fact upon which it is based (that it is packed in the form described in the last clause of paragraph 17) must necessarily be presumed to be correct.

In G. A. 7623 (T. D. 34863; 27 Treas. Dec., 346), in construing paragraph 17, we said:

It is to be noted that in dealing with chemical and medicinal compounds, etc., "put up in individual packages of two and one-half pounds or less," the Congress limits the application of this provision to "articles dutiable under this section." While the latter part of the paragraph, referring to chemicals, drugs, medicinal, and similar substances, "imported in capsules, pills, tablets, lozenges, * * * or similar forms" applies to all such articles, whether dutiable or free.

Therefore, this ichtosan being a medicinal substance and (on the record before us) put up in the form described in the latter part of paragraph 17, the classification thereunder must be affirmed, and the protest overruled.

*Protests 765162 and 768296.*—The ichtosan covered by these protests was classified at 20 per cent under the first clause of paragraph 17 and is claimed to be free under paragraph 561 as ichthyol.

The evidence is not very satisfactory as to whether it is in fact ichthyol oil, but, considered in connection with the authorities on the subject, we find that this merchandise, which is admittedly ichtosan, is a preparation of ichthyol which retains sufficient of the characteristics of ichthyol oil to be within the intent and meaning of Congress in enacting the provision for "ichthyol" in paragraph 561. See Cassett *v.* United States (2 Ct. Cust. Appls., 465; 22 Treas. Dec., 164).

We therefore hold the ichtosan in question free under the provision for "ichthyol" in paragraph 561, as claimed.

Judgment is rendered in favor of the importer, sustaining the protests as above indicated. * * *

**No. 40443.**—Protest 803061 of D. B. Levy (New York).

Medicinal Preparations.—The question here is whether certain medicinal preparations are packed in such form as to bring them within the meaning of paragraph 17 under which they were classified. They are claimed dutiable at 15 per cent under paragraph 5, tariff act of 1913.

Opinion by Brown, G. A. It was found that the preparations in question are put up in small bottles which are packed in paper cartons, holding about six bottles, inclosed in larger cases. As the small bottle is clearly under 2½ pounds the merchandise was held properly classified under paragraph 17. Abstract 37927 followed.

**No. 40444.**—Protest 800834 of F. T. Walsh (Boston).

Machine Blankets.—Endless woolen blankets for use on calico-printing machines, classified as manufactures of wool at 35 per cent ad valorem under paragraph 288, tariff act of 1913, are claimed dutiable under the provision for blankets in paragraph 289.

Opinion by Brown, G. A. G. A. 7919 (T. D. 36486) followed holding endless blankets dutiable under paragraph 288.

**No. 40445.**—Protests 761788, etc., of S. Rosenberg & Co. et al. (New York).

Mohair Linings.—Mohair linings classified as cloth in chief value of the hair of the Angora goat at 40 per cent ad valorem under paragraph 308, tariff act of 1913, are claimed dutiable as cloth in chief value of wool at 35 per cent under paragraph 288, or as wool coat linings under paragraph 290.

Opinion by Brown, G. A. On the authority of Rosenberg *v.* United States (7 Ct. Cust. Appls., —; T. D. 36510) mohair coat linings were held properly classified under paragraph 308.

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BEFORE BOARD 2, DECEMBER 4, 1916.

**No. 40446.**—Protests 785548, etc., of B. Altman & Co. et al. (New York).

BEADED WEARING APPAREL.—Articles of wearing apparel, trimmings, ornaments, and other articles, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable according to the component material of chief value.

Opinion by HOWELL, G. A. Protests sustained in part in accordance with stipulation of counsel.

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BEFORE BOARD 3, DECEMBER 4, 1916.

**No. 40447.**—Protest 796447 of S. & G. Gump Co. (San Francisco).

CARVED FIGURE OF BUDDHA—WORKS OF ART—SCULPTURES.

WAITE, *General Appraiser:* The article in question is invoiced as "antique carved figure of Buddha in sapphire, £42." It was assessed under paragraph 376, tariff act of 1913, but under what specific part thereof we are not advised only as we gather from the language of the collector and the appraiser. The appraiser's report states that it "was returned for duty by this office as 'work of art,' being a carving or sculpture in precious stones not suitable for use as jewelry." The collector in his letter of transmittal states it was returned by the appraiser as "sculpture—work of art."

It was claimed to be free of duty under paragraph 652. The claim in the protest is as follows:

> The article classified by you as "sculpture in precious stones not jewelry" at 15 per cent ad valorem should have been classified as original sculptures under the provisions of paragraph 652 of the tariff act of 1913.

The paragraphs in question, so far as pertinent, read as follows:

> 376. Works of art, including * * * statuary, sculptures, or copies, replicas, or reproductions thereof, * * * not specially provided for in this section, 15 per centum ad valorem.
>
> 652. * * * Original sculptures or statuary, including not more than two replicas or reproductions of the same; but the terms "sculpture" and "statuary" as used in this paragraph shall be understood to include professional productions of sculptors only * * *.

The article was exhibited at the hearing, and no question was raised but that it is a work of art. There may be some distinction between a carving and a sculpture. That question, however, is not important here, as we do not think the importer has shown this to have been an original, free of duty under paragraph 652, as claimed. Neither has he shown that it was a first or second replica or reproduction, as enumerated in paragraph 652.

This article is a small image of the ancient personage Buddha. Images of Buddha are made, so far as we have observed, in the same general likeness. It has not been shown who the original sculptor was, or the artist who first produced the image of which this appears to be a copy. In fact we are doubtful whether the claim of originality could be established at this date, having in mind the multitude of representations of this figure and the antiquity of what must be considered to be the original of an image of Buddha. We are not unmindful, also, of the failure of the importers to show that this is a professional production of a sculptor, which is necessary to free entry under paragraph 652.

We are satisfied that the importers have not made out their claim. The classification of the collector is therefore sustained and the protest overruled.

**No. 40448.**—Protest 786359 of C. B. Richard & Co. (New York).

SHIP'S EQUIPMENT.—Certain ship's equipment is claimed to be free of duty under the Panama Canal act or subsection 6 of paragraph J of section 4, tariff act of 1913.

Opinion by HAY, G. A. On the authority of G. A. 7971 (T. D. 36720), the ship's equipment in question was held entitled to free entry.

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**No. 40449.**—Protest 795686-6757 of H. T. Cottam & Co. (New Orleans).

AMERICAN GOODS RETURNED.—Bags or sacks are claimed to be free of duty as American goods returned under paragraph 404, tariff act of 1913.

Opinion by HAY, G. A. The protestant not having shown that the bags were imported by the exporter thereof, in accordance with the provisions of paragraph 404, the protest was overruled. G. A. 7957 (T. D. 36655) cited.

**No. 40450.**—Protest 798429 of S. Rosenbloom & Co. (Pittsburgh).

AMERICAN GOODS RETURNED—REGULATIONS.—Certain merchandise is claimed to be entitled to free entry as American goods returned, under paragraph 404, tariff act of 1913.

Opinion by HAY, G. A. The regulations of the Secretary of the Treasury not having been complied with, the protest was overruled. G. A. 7713 (T. D. 35330) followed.

**No. 40451.**—Protest 806475 of Chas. Scribner's Sons (New York).

CLERICAL ERROR.—It is claimed in this case that there was a manifest clerical error in the entry of the merchandise in question.

Opinion by HAY, G. A. Protest overruled. United States *v.* Swedish Produce Co. (4 Ct. Cust. Appls., 223; T. D. 33437), United States *v.* Wyman (4 Ct. Cust. Appls., 264; T. D. 33485), G. A. 7476 (T. D. 33590), and G. A. 7858 (T. D. 36167) followed.

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BEFORE BOARD 1, DECEMBER 6, 1916.

**No. 40452.**—Protest 805789 of A. L. Tuska, Son & Co. (New York).

PAPER HATS—TOYS.—Paper hats classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as manufactures of tissue or crape paper at 30 per cent under paragraph 323.

Opinion by SULLIVAN, G. A. Upon the amended report of the appraiser the paper hats in question were held dutiable under paragraph 323. Protest sustained in part.

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BEFORE BOARD 3, DECEMBER 6, 1916.

**No. 40453.**—Protest 794838 of R. M. Lackey (New York).

SOUR ORANGE JUICE—FRUIT JUICE.

WAITE, *General Appraiser*: The merchandise in this case was invoiced as "one cask bitter orange juice." It was reported by the gauger as a cask of sour orange juice, and was entered by the importer as sour orange juice. It was assessed under paragraph 247, tariff act of 1913, as a fruit juice containing not more than 18 per cent of alcohol. Paragraph 532 of the act provides free entry for sour orange juice containing not more than 2 per cent of alcohol. It was evidently importer's intention to import this juice under the latter provision as a free commodity. On arrival, however, it was examined by the Government officers, and an analysis showed there was something over 5 per cent of alcohol; hence it was assessed as stated. The importer filed a protest claiming it to be free under paragraph 532, or dutiable at 10 per cent ad valorem under paragraph 384 as "waste not specially provided for in this section," or under paragraph 385 as an unenumerated manufactured or unmanufactured article. At the hearing it was conceded that it contained more than 2 per cent of alcohol, and claim under paragraph 532 was abandoned. We are not disposed to find that this is dutiable as waste under paragraph 384. We therefore overrule the claims under paragraphs 384 and 532.

The commodity is orange juice, and so far as this decision is concerned it is immaterial whether it is termed sour or bitter orange juice. The examiner testified that he examined it on arrival and that it was sweet orange juice, and that it was not spoiled

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or fermented. The importer bases his claim entirely on the assumption that it had fermented on arrival and the alcohol content was increased. His testimony was that it is perfectly useless to him. A reference to the Department of Agriculture for the purpose of having it condemned was futile because in a letter from the department, marked Exhibit A, they declined to condemn it for food purposes. While it was not perhaps, on arrival, just what the importer intended to import, we are of the opinion that he has not shown by a fair preponderance of evidence that it is dutiable under any of the claims made in his protest. He has not shown to our satisfaction that it had fermented so as to take it out of the class of commodities which it represented on being shipped from the foreign country. That it contained more alcohol than that provided for in the free list (par. 532) for sour orange juice is conceded to be true, but we fail to see anything in the record which satisfies us that it was unfit for human consumption. It is orange juice, as stated above, and if not such orange juice as is provided for specifically under the free list, the collector was warranted in assessing it as a fruit juice under paragraph 247. The protest is therefore overruled.

**No. 40454.**—Protests 750645, etc., of Wm. A. Brown & Co. (New York).

SOYA BEANS.—Beans, some classified as beans not specially provided for at 25 cents per bushel under paragraph 197 and others as prepared beans at 1 cent per pound, under paragraph 199, tariff act of 1913, are claimed entitled to free entry as soya beans under paragraph 606.

Opinion by WAITE, G. A. The merchandise reported by the chemist to be soya beans was held entitled to free entry under paragraph 606. Brown *v.* United States (6 Ct. Cust. Appls., 415; T. D. 35977) followed.

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BEFORE BOARD 1, DECEMBER 8, 1916.

**No. 40455.**—Protest 791851–6540 of Bologna & Taormina (New Orleans).

OLIVE OIL—CAPACITY OF TINS.

MCCLELLAND, *General Appraiser:* The question raised by this protest is whether certain olive oil imported into the port of New Orleans was subject to duty at 20 cents per gallon or 30 cents per gallon under paragraph 45 of the tariff act of 1913. The lower rate is claimed by protestants. The pertinent language of paragraph 45 is as follows:

45. * * * Olive oil, not specially provided for in this section, 20 cents per gallon; olive oil in bottles, jars, kegs, tins, or other packages having a capacity of less than five standard gallons each, 30 cents per gallon * * *.

The paragraph of the preceding tariff act covering edible olive oil reads:

38. Olive oil, not specially provided for in this section, forty cents per gallon; in bottles, jars, kegs, tins, or other packages, containing less than five gallons each, fifty cents per gallon.

Thus it is to be observed that while it was contents and not the capacity of the container that controlled in the assessment of duty under the act of 1909 (note United States *v.* Younglove Grocery Co., 5 Ct. Cust. Appls., 377; T. D. 34873, and cases cited therein), in the existing act, paragraph 45, it is the *capacity* and not the contents that controls the rate of duty to be paid by the importer.

While the testimony before us as to the tins containing the oil in question may not be said to be definite or as convincing as it might have been, the importers' claim that each of the tin containers had a capacity of "a little over 5 gallons," remains uncontradicted. The weigher testifies that he weighed the contents of the tins; that he found the total contents of the 180 tins to be 898.667 gallons, on the basis of 7½ pounds to the gallon, or the equivalent of 4.99 gallons to each tin. There is nothing in this statement of the measurement by weight to negative the claim that the tins each had a capacity of 5 gallons, or the sworn statement of the witness that each had a capacity of "a little over 5 gallons."

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The preponderance of the testimony, meager and unsatisfactory as it is on the point of capacity, favors the claim of the protestants.

Decision of the collector reversed.

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BEFORE BOARD 2, DECEMBER 8, 1916.

**No. 40456.**—Protest 800703-51224 of Sears, Roebuck & Co. (Chicago).

COTTON CLOTH—PROTEST FEE.—Nainsook classified as embroideries at 60 per cent ad valorem under paragraph 358, tariff act of 1913, is claimed dutiable as cotton cloth at 30 per cent under paragraph 252.

Opinion by COOPER, G. A. G. A. 7641 (T. D. 34927) followed as to protest fee. The merchandise was found not to be embroidered and held dutiable as cotton cloth under paragraph 252, as claimed.

**No. 40457.**—Protests 799547, etc., of Morimura Bros. (New York).

HANDKERCHIEFS.—Handkerchiefs classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable under paragraph 255 or 282.

Opinion by COOPER, G. A. Cotton handkerchiefs decorated with drawnwork were held dutiable under paragraph 255. Hemstitched flax handkerchiefs decorated with drawnwork were held dutiable under paragraph 282. G. A. 7769 (T. D. 35675) followed. Drawnwork handkerchiefs, embroidered, were held properly classified as embroidered handkerchiefs under paragraph 358. G. A. 7768 (T. D. 35654) followed. Handkerchiefs having in addition to the drawnwork decoration an ornamentation known as Maltese cross were held properly classified as handkerchiefs in part of lace under paragraph 358.

**No. 40458.**—Protest 798177 of Mogi, Momonoi & Co. (New York).

SANDALS, COTTON CHIEF VALUE.—Sandals classified as manufactures of cotton at 30 per cent ad valorem under paragraph 266, tariff act of 1913, are claimed to be in chief value of straw or wood, dutiable at 25 per cent under paragraph 368 or at 15 per cent under paragraph 176.

Opinion by COOPER, G. A. From the analysis it was found that cotton is the component material of chief value. The sandals were held properly classified under paragraph 266.

**No. 40459.**—Protests 788746, etc., of F. Meyer et al. (New York).

FIGURED COTTON CLOTH—DOTTED SWISS.—Figured swisses, or plumetis, classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, or as manufactures of cotton under paragraph 266, tariff act of 1913, are claimed dutiable as cotton cloth under paragraph 252.

Opinion by COOPER, G. A. On the authority of G. A. 7904 (T. D. 36386) the merchandise was held dutiable as figured cotton cloth under paragraph 252.

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## (T. D. 36868.)

### *Silk veils.*

VAN RAALTE *v.* UNITED STATES (No. 1754).

1. RELATIVE SPECIFICITY.

A silk article known to the trade as a veil and as a scarf would be dutiable *eo nomine* as a veil under paragraph 358, tariff act of 1913, and not generally as silk wearing apparel under paragraph 317.

2. VEIL, DEFINITION.

To hold that the name veils applies only to such articles as cover and protect the face of the wearer only would be too narrow a definition of the word.

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3. VEILS—AUTOMOBILE AND CHIFFON VEILS—AUTOMOBILE SCARFS.

Long and narrow light-textured silk fabrics, known variously in the trade as veils, scarfs, automobile and chiffon veils, and automobile scarfs, chiefly used by women as a covering for their hats or faces or both while riding in automobiles or, in the evening, to cover their heads and keep their hair intact or to throw around their shoulders, are dutiable *eo nomine* as veils under paragraph 358, tariff act of 1913, and not generally as wearing apparel under paragraph 317.

## United States Court of Customs Appeals, November 2, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7924 (T. D. 36527).

[Affirmed.]

*Churchill, Marlow & Hines* for appellant.

*Bert Hanson*, Assistant Attorney General (*Thomas J. Doherty*, special attorney, of counsel), for the United States.

[Oral argument October 18, 1916, by Mr. Hanson.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

The merchandise now under consideration was assessed with duty at the rate of 60 per cent ad valorem under the *eo nomine* enumeration of silk veils, contained in paragraph 358 of the tariff act of 1913.

The importers protested against the assessment, claiming that the goods were not silk veils but were silk scarfs, and therefore dutiable at 50 per cent ad valorem under the provision for silk wearing apparel contained in paragraph 317 of the act.

The protest was tried upon testimony before the Board of General Appraisers and was overruled. The importers now appeal.

The exhibits and testimony disclose the fact that the present merchandise consists of woven articles of various colors, of light texture, composed wholly of silk, measuring 75 to 90 centimeters in width and 170 centimeters in length. In some few instances the articles are as narrow as 45 centimeters. It is conceded that they would be dutiable under the general provision for silk wearing apparel in paragraph 317 of the act, unless taken out of that paragraph by the more specific provision for silk veils contained in paragraph 358. The sole question in the case therefore is one of fact, namely, whether the articles in question are silk veils, according to either the common or commercial use of that term.

The collector found the articles to be veils and so assessed them; and upon the testimony the board also held them to be veils. The present question, therefore, is whether the decision of the board is clearly against the weight of the evidence contained in the record.

Similar articles were before the board upon the same issue in a case filed by the appellants and reported in G. A. 7734 (T. D. 35498). The board held in that case, as in the present one, that the articles



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in question were dutiable under the provision for silk veils rather than under the more general provision for silk wearing apparel. The testimony taken in the case just cited is incorporated in the present record, and, in addition thereto, the testimony of six additional witnesses upon the issue was submitted by the respective parties at the hearing of the protest now upon appeal.

Upon a review of the record we find that the articles in question are chiefly used by women as a covering for their hats or faces, or both, while riding in automobiles. They are also used in the evening by women to cover their heads and keep their hair intact when without a hat or bonnet. They are also sometimes used in the evening to throw around the shoulders of the wearer. Some of the witnesses testify that the articles are known in the trade as veils, or as automobile and chiffon veils, and also as automobile scarfs. Other witnesses testify that they are generally known in the trade as scarfs, but that they are also known as automobile veils and as chiffon veils. The testimony is therefore divided into the two classes—that which supports the claim that the articles are known in the trade under the unqualified name of veils, and that which denies that the articles are thus known in the trade, but admits that they are known there as automobile veils and as chiffon veils.

We think that upon this testimony the board was justified in sustaining the assessment of the articles as veils. Not only the trade testimony, but also the conceded use and character of the articles support this view. The articles are chiefly worn by women over their heads for the various purposes of protecting their hats, their hair, their faces, or all of these, while riding in automobiles. Articles like these, designed for such uses, fall within the common understanding of the word "veils." This statement is supported by the following definition of the word:

Standard Dictionary:

1. A piece of cloth or other material, usually thin and light, worn over the face or head for concealment, protection, or ornament. (1) A strip of cloth wound about the face to conceal it from view, as by oriental women, usually leaving the eyes visible, and not often covering only the mouth and chin. (2) In the ordinary dress of the women of modern western nations, a piece, as of gauze or crape, tied or pinned about the face or hanging from the hat or bonnet, as for protection from sun and wind.

It is claimed by the importers that fabrics used in part for the purpose of protecting the hats or shoulders of the wearers should not be called veils, but scarfs, the importers contending that the name veils properly applies only to such articles as cover and protect the face of the wearer only. There being no *eo nomine* provision for scarfs in the act, the articles would fall under this claim within the general classification of silk wearing apparel.

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We think, however, that this is too narrow a definition of the term veils as used in the act and that the name is broad enough to cover such fabrics as the present ones, even though they may be used in part to cover and protect the wearer's hat as well as her face, and this conclusion is furthermore abundantly sustained by the testimony in relation to the trade usage of the term.

It should also be noted that if the term veils as generally used in the trade covers and includes the present articles, then they would respond to that term as used in the cited paragraph, even though the articles are sometimes also called scarfs. Lidenberg *v.* Robertson (41 Fed., 763); Loewenthal *v.* United States (2 Ct. Cust. Appls., 43; T. D. 31592).

The decision of the board is therefore *affirmed.*

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(T. D. 36869.)

*Gauge of beer.*

UNITED STATES *v.* LÜCHOW (No. 1657). LÜCHOW *v.* UNITED STATES (No. 1658).

GAUGE OF BEER—ALLOWANCE FOR WANTAGE OR OUTAGE.

In importations of Wurzburger and Pilsner beer the importer made an honest effort to estimate the amount of wantage or outage, finding 2.96 per cent for the Wurzburger and 3.51 per cent for the Pilsner. By making a justifiable criticism of the importer's method, the Board of United States General Appraisers decided that the proper allowance should be 1 per cent. By giving due weight to the method used and conclusion reached by the manufacturer, corroborative of the method and conclusion of the importer, the court decides that the allowance should be 2 per cent.

United States Court of Customs Appeals, December 2, 1916.

CROSS appeals from Board of United States General Appraisers, G. A. 7811 (T. D. 35881).

[Modified.]

*Bert Hanson,* Assistant Attorney General (*Samuel Isenschmid,* special attorney, of counsel), for the United States.

*Comstock & Washburn* (*Albert H. Washburn* of counsel) for the importer.

[Oral argument October 12 and 13, 1916, by Mr. Hanson and Mr. Washburn.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

These are cross appeals from a decree of the Board of General Appraisers, G. A. 7811 (T. D. 35881).

The merchandise is beer in half-barrel casks, dutiable at 23 cents a gallon. No question arises over classification, the protest being

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confined to the claim that the amount of duty assessed is excessive by reason of the failure of the collector to make allowance for wantage or outage.

Prior to August 2, 1909, a Treasury regulation (T. D. 6055), promulgated August 5, 1883, provided for ascertaining the quantity of beer in any shipment by outside measurement, the wantage to be ascertained by sounding out the line at which the liquor stood in the package, and then computing the capacity of the empty space. That regulation was based upon information that the removal of the bung would cause the beer to spoil. After this regulation was promulgated, and prior to August 2, 1909, improved methods of manufacture and treatment of beer were adopted, so that, at least as to fully matured beer, it became possible to fill the cask substantially bung full if the beer was reduced to the proper temperature. Evidently in view of this fact, and doubtless based upon such information as came to the department from investigation, an order was, on the date last named, issued to assess beer at invoice quantity whenever it was equal to or exceeded the branded capacity, and when the invoice quantity was less than the branded capacity to assess for full branded capacity less fractions of liters. The report upon which this order was based, in part at least, was made by Frederick Achenbach, confidential agent of the Treasury. The importer not being satisfied with this ruling sought to show that in practice shipments of beer and ale, respectively, which reach our ports for importation are substantially less than the branded capacity, at least in the case of individual importers.

This contention was put forth in United States *v.* Cummings (3 Ct. Cust. Appls., 291; T. D. 32576) as to ale (the Treasury regulation of August 2, 1909, having been by a subsequent Treasury order made applicable to ale). In that case, upon the proofs adduced, we directed an allowance for wantage of 3 per cent. The case of Hollender *v.* United States (4 Ct. Cust. Appls., 406; T. D. 33850) followed. That case related to beer. The question of fact was gone into at length and the importer sought to show the wantage by measurements made in bottling the beer and showing that the amount of beer as it appeared to be in bottles was less than the branded capacity of the casks from which the beer was bottled. Both the Board of General Appraisers and this court reached the conclusion upon the record as there made up that there was so much uncertainty as to the accuracy of the method employed that it was impossible to base a conclusion upon which we could rest our judgment in an allowance for the wantage. In that case the report of Achenbach was received in evidence, and it appeared from that report that he had visited substantially all the breweries in which

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beer was made and witnessed the process of filling the barrels, and that the whole barrel was filled with beer without froth and the only vacant space left was the bunghole, and that a workman with a hammer quickly drove a bung into this vacant space, so that the bunged-up barrel is entirely full of beer. Notwithstanding this, it appeared in the case that some of the barrels imported were inspected for shortage by the importer, the steamship company, and the customs gauger, and it was assumed that no unfilled barrel escaped. The testimony in the Hollender case is introduced as a part of the record in the present case and additional testimony is taken.

In this report of Mr. Achenbach, which was in evidence in the former case and also in this, it is stated:

> I frankly told a number of the most intelligent brewers the purpose of my inquiry, stating it had been planned to weigh the cask upon its arrival in the United States and then by subtracting the weight of the empty cask, determine the weight of the liquid contents, for knowing the weight per liter or per gallon of the beer in question, it would be easy to establish the number of liters or gallons in the barrel with mathematical accuracy. I asked the brewers if they could suggest a better or a fairer method. They replied without exception that the proposed method was just and that they could suggest none that would be more equitable.

The importer in the present case made an attempt to follow out this method of ascertaining the wantage. The testimony on the part of the importer is to the effect that barrels were selected which were not damaged in any way, and that by introducing a siphon, the beer was siphoned out completely and weighed. The casks were then weighed, and by this method the wantage was ascertained. It certainly ought to be open to the importer to offer the best proof that can be reasonably secured to show what the fact is in any given case. If as a matter of fact the beer imported was less than that assessed for, he is entitled to relief, and in determining this question, while strict proof should be required, a rule ought not to be adopted which in effect amounts to a denial of remedy. We have no doubt, nor apparently had the Board of General Appraisers any doubt, as to the credibility of the witnesses in this case.

There is a question which will be referred to later on as to whether the figures of wantage are too high. But first let us refer to the position which was taken by the Government in the Hollender case, and which had some weight in the determination of the question of fact. As will be noted, in that case the testimony of the confidential agent was offered in the form of a report to the Treasury Department. His credibility was in no way attacked nor is it now attacked. But his opportunities for observation are made the subject of comment by the importer's counsel, and very properly. The report indicates that he witnessed the filling of barrels in all the brew-

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eries to which his report related. In his testimony on this trial he says:

I notice in my report I said "all," but that is too far back for me to answer now.

He further testified:

Q. Nor can you tell us in how many breweries you saw these casks or barrels being filled at this time?—A. Yes; I can answer that. I saw it in at least the majority of the breweries named on page 92.

Q. Tell us which ones of those?—A. I can not do that.

Q. How can you say it was the majority, then?—A. According to my present recollection I saw the process of filling in nearly all of them. There may have been two or three I did not see it in, but it may have been all. I don't remember, this is so long back, I can not make a statement positively. I looked at enough to satisfy me on that point.

On redirect examination he was asked:

Q. You correctly stated at that time (the date of the report) the circumstances that you were reporting about?—A. Barring clerical errors. I was under big pressure of work at that time. Except I will modify my report in this way: I think that I said there was beer being filled in all the breweries I visited. My recollection is not clear enough on that. It was nearly all instead of all. I want to put that in because it is the truth.

This variation would not be so important except for the fact that even in cases in which the witness saw the filling of the casks going on it is not made clear by this record that these casks were casks of beer for exportation. On the contrary, so far as the shipments from one brewery are concerned, the testimony tends very strongly to show the reverse.

The importer in this case produced Dr. Vogel, the vice president of the Pilsner Genossenschafts Brauerie, of Pilsen, who testified to his recollection of the fact of the visit of Mr. Achenbach to the brewery, and that he was able to fix the date, and at that time they were engaged in filling beer for domestic or continental consumption and not for export to the United States.

The testimony in this case also discloses that beer prepared for exportation to the United States differs from fully matured beer, in this important particular: The beer for home consumption is left in the reservoir for the purpose of fermentation three and a half to four months, whereas beer which is destined for export to the United States is imperfectly matured, because it remains in the reservoir not more than two months, and that when the export beer is being barreled, a substance called krausen is added to the beer. This krausen is beer in its first stage, namely, in the second or third day of fermentation. When the beer for exportation is barreled, first a quantity of this krausen is put in and then the additional beer two months matured is introduced and the result is that the carbonic acid which is liberated increases the volume of the liquid in the barrel so that, ac-

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cording to the testimony of Dr. Vogel, it is impossible to fill the barrel bung full. There is nothing to throw discredit upon the testimony of this witness, nor is there anything to throw discredit upon the witnesses for the importer who made the tests upon which the importer relies. By these tests, the percentage of outage which was wanting in the importations of the Wurzburger beer was 2.96 per cent and the percentage of wantage in the Pilsner beer was 3.51 per cent.

The method by which the wantage was ascertained by the witnesses for the importer is criticized. This method consisted, as stated, of attempting to draw out from the cask all the beer, and in doing so, with the barrel resting on one end, a tube was introduced at the bung of the other end, and by suction all the contents of the barrel were said to be removed. The testimony of the operator shows the process, and it is corroborated by the testimony of the superintendent of the bottling works, to the effect that after the beer was removed the barrel was examined and found to be empty, in some instances by introducing an electric light and in other instances by turning the barrel on end and finding it empty. But it appeared in the course of the examination of the operator that this tube, which was introduced into the barrel and rested upon the bottom, had a conical point, and that near the point of the tube were three holes into which the contents of the barrel were sucked and brought up. He testified as follows:

Q. Is it not possible that some of the sediment remains in the barrel? You can not put the sucking tube right down to the bottom of the barrel, otherwise you would not get any suction.—A. Oh, yes. There are holes on the end of this tube, a little bit above, a little bit raised. They are not on the very end, they are on the side of the pipe.

Q. How much are they raised from the end?—A. Probably a quarter of an inch.

Q. Probably a quarter of an inch? Then there is a quarter of an inch of beer and sediment or whatever it may be in the bottom of the barrel that you can not get out?—A. No, sir; it is sucked out.

Q. The end of this tube is closed up?—A. The end of the tube is closed up.

Q. There are holes through which the beer is sucked up a quarter of an inch from the end?—A. I never measured it. Probably half an inch, probably less.

Q. Is it not true that if you put that pipe down all the way to the bottom of the barrels, and the holes being a quarter of an inch from the end, you can not suck anything out of that barrel that is below that quarter of an inch?—A. No, sir; you can suck it all out, to the very last drop, if the barrel stands perpendicular. I mean straight up and down.

The board concluded that the witness was mistaken in supposing that this material could all be sucked out and that a deduction should be made on account of this fact of 1¼ pints, which would represent 1 per cent of the total capacity. We think this reduction from the claimed shortage was justifiable, but the board, we think, was in

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error in assuming that but for this allowance of 1 per cent the total allowance would be limited to 2 per cent. As the net allowance permitted by the board was 1 per cent, as the record shows, according to measurements of the witness Miller and the computation made by the accountant, the demonstrated outage of the Wurzburger is 2.96 per cent and the Pillsner 3.51 per cent, or an average outage of 3.23+ per cent of the beer in suit. So, if from these figures a deduction of 1 per cent is made, the allowance would, if based solely upon these figures, amount to something over 2 per cent.

But there is another item of testimony in the case which is not to be overlooked, and that is the testimony of the witness Dr. Vogel of tests made abroad of this beer which was shipped to the importer. He testified that a claim was made by the importer for an allowance for wantage, and that he replied that such allowance could not be made until he had returned to his home and made tests, or, as he puts it, "I said we must prove it again and again in the brewery." These tests were made, and it appears that an allowance of 2 per cent from the invoice quantity in addition to the fractions of liters, which were ignored, was made, and that the rebate of 2 per cent was based upon the brewery's calculation or estimate of the difference between the invoice quantity and the actual quantity of beer in the barrel. He was asked how he determined that it was just 2 per cent. He answered:

> We have found this by drawing the contents of the barrel and by measuring it then. Then we have also opened full barrels again and have permitted all the carbonic acid gas to escape, and then filled up the barrel again with liquid, and the amount which we filled into those barrels represented this rebate which we give to Mr. Lüchow.

This testimony, while corroborative of the testimony as to the importer's tests, should also be deemed as tending to limit the amount of allowance which should be made, and upon the whole case we think that it is established by fairly satisfactory evidence that upon the importation here in question there should be an allowance of 2 per cent on the importations.

The decision of the board will be *modified* accordingly.

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(T. D. 36870.)

*Japanese white-oak lumber.*

MITSUI & CO. *et al.* *v.* UNITED STATES (No. 1699).

1. CONSTRUCTION, PARAGRAPHS 203, TARIFF ACT OF 1909, AND 169, TARIFF ACT OF 1913—"ALL OTHER CABINET WOODS."

In paragraphs 203, tariff act of 1909, and 169, tariff act of 1913, Congress levied duty upon certain and all-sawed forms of specified woods, in which

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oak is not included, and all "cabinet woods not further manufactured than sawed." Manifestly what are "cabinet woods" besides the ones named is left to common understanding or proof. In view of the well-known and multitudinous uses to which oak is devoted we can not say as a matter of common knowledge that all oak is a cabinet wood.—United States *v.* Mitsui & Co. (4 Ct. Cust. Appls., 449; T. D. 33876).

2. CABINET WOOD—JAPANESE WHITE-OAK LUMBER.

The fact that railroad ties are cut from Japanese white oak is not sufficient to prevent Japanese white-oak lumber from being cabinet wood. The evidence shows that the larger portion of Japanese white-oak lumber introduced into the commerce of this country is used as cabinet wood; and, upon the evidence in this case, the decision of the Board of United States General Appraisers sustaining the collector's classification of this sawed Japanese white oak as cabinet wood under paragraph 203, tariff act of 1909, or 169, tariff act of 1913, is affirmed.

## United States Court of Customs Appeals, December 2, 1916.

APPEAL from Board of United States General Appraisers, Abstract 39231.

[Affirmed.]

*Curie, Smith & Maxwell* (*Thomas M. Lane* and *Albert MacC. Barnes, jr.*, of counsel) for appellants.

*Bert Hanson*, Assistant Attorney General (*Martin T. Baldwin* and *Leland N. Wood*, special attorneys, of counsel), for the United States.

[Oral argument October 27, 1916, by Mr. Lane and Mr. Baldwin.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

The merchandise the subject of our present inquiry consists of three importations of Japanese white-oak lumber. The invoice is missing in one case, but the collector reports it to have been sawed cabinet lumber. The invoice of another importation describes the lumber as quarter-sawed oak and plain oak. The invoice description of the third is plain oak boards. Two of the importations were under the tariff act of 1909 and the other was made under the tariff act of 1913. In each instance the oak was assessed for duty as cabinet wood not further manufactured than sawed, that under the tariff act of 1909 at 15 per cent ad valorem, and that under the tariff act of 1913 at 10 per cent ad valorem. The two paragraphs furnishing the claimed authority for such assessment are as follows:

*Tariff act of 1909.*

203. Sawed boards, planks, deals, and all forms of sawed cedar, lignum-vitæ, lancewood, ebony, box, granadilla, mahogany, rosewood, satinwood, and all other cabinet woods not further manufactured than sawed, fifteen per centum ad valorem; * * *.

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*Tariff act of 1913.*

169. Cedar commercially known as Spanish cedar, lignum-vitæ, lancewood, ebony, box, granadilla, mahogany, rosewood, and satinwood; all the foregoing when sawed into boards, planks, deals, or other forms, and not specially provided for in this section, and all cabinet woods not further manufactured than sawed, 10 per centum ad valorem; * * *.

In G. A. 7357 (T. D. 32454) the Board of General Appraisers held Japanese white oak in the log to be cabinet wood, and in G. A. 7682 (T. D. 35131) they held Japanese white oak in the form of sawed lumber to be cabinet wood. In the case of United States *v.* Mitsui & Co. (4 Ct. Cust. Appls., 449; T. D. 33876) we had before us the issue of whether a certain importation consisting of sawed lumber (ash, poplar, and oak, the last named being Japanese oak) was cabinet wood. The Board of General Appraisers held that upon the record there made the evidence failed to show that the importation came within the designation of cabinet wood. In affirming that decision upon the record, and in discussing paragraph 203 of the tariff act of 1909, it was said:

Congress has seen fit to declare that certain and all sawed forms of specified woods, in which oak is not included, and "all other cabinet woods not further manufactured than sawed," shall pay duty at the rate of 15 per cent ad valorem. Manifestly what are "other cabinet woods" is left to common understanding or to proof. In view of the well-known and multitudinous uses to which oak is devoted, we can not say, as a matter of common knowledge, that all oak is a cabinet wood. Upon the evidence above recited we can not say that the board erred in holding that the oak in this case was not a cabinet wood.

It will be observed that the question was there treated as a question of fact upon the proof. In the present case a somewhat extensive record is made up by testimony of witnesses, some of whom have established an arbitrary standard in determining what is and what is not cabinet wood, and the evidence has for this reason furnished a sharp conflict. Some of the witnesses for the importers appear to have reached the conclusion that Japanese oak is not cabinet wood, for the reason that much of it is used for common purposes, much of it even for railroad ties. It is, however, manifest from the evidence that in all cabinet woods, including as high a grade of wood as mahogany, in the country of production it is not uncommon to use portions of it for railroad ties. It is, nevertheless, cabinet wood, and the same thing could be said of black walnut and other well-recognized cabinet woods. The same thing is true of Japanese oak. It is used in considerable part for railroad ties, but the sawed Japanese oak, which is the subject of importation in these cases, is none of it so used nor is it adapted to such use. The railroad ties made from Japanese oak are made from inferior grades of lumber, and

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common knowledge would suggest that they are made largely from smaller trees, such as are not cut into lumber for exportation. If we come to deal with the lumber which is the subject of the present importations, the evidence, fairly construed, leads us to the conclusion that the larger portion of lumber of that class introduced into the commerce of this country is used for purposes which are designated by the witnesses as cabinet use; in other words, used as cabinet wood.

The importers undertake to show by a classification of the importations that a great portion of Japanese oak introduced into this country is used for railroad ties. It is possibly true that more than half of all the importations of articles or material made from Japanese oak during the period under discussion in the testimony consisted of railroad ties, but it does not follow that because railroad ties may be cut from the trees from which also the sawed lumber in question is manufactured that the product so manufactured may not be cabinet wood.

We think the question should be as to whether sawed lumber, such as that imported, is cabinet wood, and in reaching a conclusion such material as has been diverted to a special use is not to be counted in determining what the major use or uses of Japanese lumber imported into this country *as such* is.

The board sustained the action of the collector in treating these importations as cabinet wood not further manufactured than sawed, and we think the testimony fully justified the finding of fact which resulted in this conclusion.

*Affirmed.*

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## (T. D. 36871.)

### *Sugar machinery.*

BROWN & CO. *v.* UNITED STATES (No. 1721).

1. CONSTRUCTION, PARAGRAPH 391, TARIFF ACT OF 1913—CHIEF USE—SUGAR-MANUFACTURING MACHINERY.

The language, "machinery for use in the manufacture of sugar," paragraph 391, tariff act of 1913, refers to the chief use made of such machinery when imported, and not to the use made of a particular importation.

2. MACHINERY IMPORTED FOR SUGAR-MAKING USE, BUT CHIEFLY USED OTHERWISE.

Two centrifugal machines and a pump and tank for use in connection with them were imported for use in the manufacture of sugar, and are being actually so used. It was shown, however, that about 90 per cent of such machines are used otherwise. They are dutiable under the residuary provision for manufactures of metal, paragraph 167, tariff act of 1913, and not admissible

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free of duty as machinery for use in the manufacture of sugar, paragraph 391.

## United States Court of Customs Appeals, December 2, 1916.

APPEAL from Board of United States General Appraisers, Abstract 39549. [Affirmed.]

*Allan R. Brown* for appellants.

*Bert Hanson*, Assistant Attorney General (*Martin T. Baldwin*, special attorney, of counsel), for the United States.

[Oral argument October 25, 1916, by Mr. Brown and Mr. Baldwin.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

The merchandise in question on this appeal consists of two centrifugal machines, one pump for driving one of the machines and one tank for the same. This merchandise was assessed for duty at 20 per cent ad valorem under the residuary provision for manufactures of metal in paragraph 167 of the tariff act of 1913. It is claimed to be classifiable as machinery for use in the manufacture of sugar under paragraph 391 of the same act. Paragraph 391 reads as follows:

391. Agricultural implements: Plows, tooth and disk harrows, headers, harvesters, reapers, agricultural drills and planters, mowers, horserakes, cultivators, thrashing machines, cotton gins, machinery for use in the manufacture of sugar, wagons and carts, and all other agricultural implements of any kind and description, whether specifically mentioned herein or not, whether in whole or in parts, including repair parts.

No testimony was taken before the board. The case was by consent submitted on the report of the local appraiser, which is as follows:

The merchandise consists of two centrifugal machines, one pump for driving one of the machines, and one tank for the same. Said machines were installed in Arbuckle's sugar refinery and are used in the making of sugar. As about 90 per cent of such machines are used for purposes other than sugar making, such as in dye works, certain chemical processes, laundry extractors, cream separators, etc., it was returned for duty as a manufacture of metal n. s. p. f. at 20 per cent ad valorem under paragraph 167 of the act of 1913, in accordance with department instructions in T. D. 35516.

The board overruled the protest of the importers and held that the goods were dutiable as assessed.

It will be seen that the sole question standing for decision is whether a machine the chief use of which is other than in the manufacture of sugar but which is imported for such lesser use falls within the terms "machinery for use in the manufacture of sugar" used in paragraph 391. An argument of much force is presented in support of the construction of the clause in question as intended to attach the phrase "machinery for use in the manufacture of sugar" to the particular importation. We think, however, that in view of the

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earlier decisions of the Supreme Court, of this court, and others, this view is not tenable. We have held that in determining whether an article falls within the terms in the paragraph here in question "all other agricultural implements of any kind and description," chief use is the determining factor. United States *v.* Boker & Co. (6 Ct. Cust. Appls., 243, 245; T. D. 35472); Quirk *et al.* *v.* United States (6 Ct. Cust. Appls., 444; T. D. 35983); United States *v.* Tower (6 Ct. Cust. Appls., 562; T. D. 36199). But it is urged that the instant case is distinguishable as the merchandise here involved is specifically enumerated as "machinery for use in the manufacture of sugar," which was not true of the merchandise involved in any of these cases cited. It is possible to note such a distinction. The case of United States *v.* American Express Co. (6 Ct. Cust. Appls., 494; T. D. 36124), however, dealt with parts of machines used in the manufacture of sugar. The test of chief use was implied rather than distinctly enunciated. It was said, at page 497:

> If machinery which intervenes directly in the development of the finished product is machinery for use in the manufacture of sugar, then, in our opinion, machines which are necessarily and exclusively or chiefly used to make the operation of such machines commercially practical, efficient, and economical, must likewise be so regarded. To hold otherwise would result in an anomaly which we do not believe it was the intention of Congress to perpetrate. In our opinion the obvious intent of the provision was to favor the sugar-making industry and give the benefit of free entry at least to all machinery peculiar to and chiefly or exclusively used by sugar factories. That is to say, any machine constituting a necessary and essential part of the equipment of sugar factories and which is exclusively or chiefly used by them comes within the designation of "machinery for use in the manufacture of sugar."

The Supreme Court has construed terms very like those here involved in a number of cases. As the case of "trimmings, * * * used for making or ornamenting hats, bonnets, and hoods," terms construed in Hartranft *v.* Langfeld (125 U. S., 128). In that case the charge of the trial judge making the dutiability of the goods under that paragraph to turn upon the question of chief use was approved. To the same effect is Cadwalader *v.* Wanamaker (149 U. S., 532); Walker *v.* Seeberger (149 U. S., 541); Hartranft *v.* Meyer (149 U. S., 544). These cases were cited and the principle applied in Magone *v.* Wiederer (159 U. S., 555). See also Magone *v.* Heller (150 U. S., 70). The cases in this court referred to in the brief of counsel for the Government are quite in harmony with these decisions. Such cases are Comey & Johnson Co. *v.* United States (4 Ct. Cust. Appls., 285; T. D. 33493); United States *v.* Hempstead & Son (3 Ct. Cust. Appls., 436; T. D. 33004); Auffmordt & Co. *et al.* *v.* United States (7 Ct. Cust. Appls., —; T. D. 36320).

We think the case is one for the application of the rule of chief use, and therefore affirm the decision of the board.

*Affirmed.*

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## (T. D. 36872.)

### *Jacquard figured laces.*

UNITED STATES *v.* SNOW'S UNITED STATES SAMPLE EXPRESS CO. (No. 1747).

1. CONSTRUCTION, PARAGRAPH 358, TARIFF ACT of 1913.

The words "by whatever name known," in the third clause of paragraph 358, tariff act of 1913, do not modify the word "laces" in the first.

2. JACQUARD FIGURED FLAX LACES FOR MAKING CURTAINS.

Jacquard figured flax laces, chiefly used in making lace curtains, are dutiable under paragraph 258, tariff act of 1913, as Jacquard figured upholstery goods, and not under paragraph 358 as "laces."

## United States Court of Customs Appeals, December 2, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7922 (T. D. 36501).

[Affirmed.]

*Bert Hanson*, Assistant Attorney General (*Martin T. Baldwin*, special attorney, of counsel), for the United States.

*Crim & Wemple* (*William L. Wemple* and *George C. Winne* of counsel) for appellee.

[Oral argument October 24, 1916, by Mr. Baldwin and Mr. Wemple.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

For a statement of the case and the conclusions reached by the board, we quote the opinion of Howell, General Appraiser, as follows:

The merchandise involved consists of flax laces, which are Jacquard figured. Duty was assessed thereon by the collector at the rate of 60 per cent ad valorem under the provision of paragraph 358, tariff act of 1913, which paragraph reads as follows:

358. Laces, lace window curtains not specifically provided for in this section, coach, carriage, and automobile laces, and all lace articles of whatever yarns, threads, or filaments composed; handkerchiefs, napkins, wearing apparel, and all other articles or fabrics made wholly or in part of lace or of imitation lace of any kind; embroideries, wearing apparel, handkerchiefs, and all articles or fabrics embroidered in any manner by hand or machinery, whether with a plain or fancy initial, monogram, or otherwise, or tamboured, appliquéd, or scalloped by hand or machinery, any of the foregoing by whatever name known; edgings, insertings, galloons, nets, nettings, veils, veilings, neck ruffllings, ruchings, tuckings, flouncings, flutings, quillings, ornaments; braids, loom woven and ornamented in the process of weaving, or made by hand, or on any braid machine, knitting machine, or lace machine, and not specially provided for; trimmings not specially provided for; woven fabrics or articles from which threads have been omitted, drawn, punched, or cut, and with threads introduced after weaving, forming figures or designs, not including straight hemstitching; and articles made in whole or in part of any of the foregoing fabrics or articles; all of the foregoing of whatever yarns, threads, or filaments composed, 60 per centum ad valorem.

The importers claim that these laces are dutiable at the rate of 35 per cent ad valorem under the provision in paragraph 258 for "tapestries, and other Jacquard figured upholstery goods, composed wholly or in chief value of cotton or other vegetable fiber."

The record shows that the laces here in question, which, as we have said, are Jacquard figured, are chiefly used in the making of lace curtains, and such

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use brings them within the provision for "Jacquard figured upholstery goods." Carter *v.* United States (6 Ct. Cust. Appls., 253; T. D. 35475).

The Assistant Attorney General contends, however, that the Carter case is not controlling, inasmuch as paragraph 358 provides, as he says, for "laces by whatever name known." We think this contention arises from a misreading of paragraph 358. It will be observed, as stated in United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388), that—

> With reference to the things to which it relates, the paragraph naturally subdivides into the following clauses, stated in the order of their appearance therein: (1) Laces, window curtains of lace not specially provided for, and all lace articles of whatever yarns, threads, or filaments composed; (2) handkerchiefs, napkins, wearing apparel, and all other articles or fabrics made wholly or in part of real or imitation lace; (3) embroideries, wearing apparel, handkerchiefs, and all fabrics or articles embroidered, tamboured, appliquéd, or scalloped by hand or machinery, any of the foregoing by whatever name known; (4) edgings, insertings, ruchings, tuckings, flounces, and other similar articles, veils, veilings, nets, nettings, and ornaments; (5) loom-woven braids ornamented in the process of weaving or made by other machinery or by hand not specially provided for; (6) trimmings not specially provided for; (7) woven fabrics or articles with threads omitted, cut, drawn, or punched, having new threads introduced and containing figures or designs, as therein specified; (8) articles made in whole or in part of the foregoing fabrics or articles; (9) declares that all the foregoing of whatever yarns, threads, or filaments composed shall be assessed at 60 per cent ad valorem.

From this analysis of the paragraph it is apparent that the phrase "by whatever name known" has reference only to the articles found in the third subdivision and in no way enlarges the provision for "laces" which appears in the first subdivision of the paragraph.

The Assistant Attorney General contends, furthermore, that the reference in paragraph 358 to lace window curtains indicates that goods in the nature of curtain materials are within the contemplation of that paragraph. If that argument is sound as to laces it is equally sound as to the nettings which were passed upon in the Carter case, *supra*, for both laces and nettings of the character here in question are curtain materials, and the court held that it was the use of the nettings as curtain materials which took them out of the *eo nomine* provision for "nettings" and placed them within the provision for "Jacquard figured upholstery goods."

The board construed the former decision of this court aright, and we agree with the holding that the words, "by whatever name known" in clause 3 of the above-quoted paragraph from United States *v.* Snow's United States Sample Express Co., *supra*, can not properly be held to extend or modify the word "laces" in the first paragraph.

*Affirmed.*

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## (T. D. 36873.)

### *Antique furniture.*

UNITED STATES *v.* SHALLUS (No. 1716).

1. EVIDENCE, WEIGHT OF—PRESUMPTION.

Where the evidence consisted of the testimony of 11 competent and credible witnesses, 6 for the importer and 5 for the Government, all of the importer's witnesses being in substantial agreement with each other and 4

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of the Government's being at variance with each other as to the considerations upon which they based their testimony, this court would not be justified in saying that the Board of United States General Appraisers erred in holding that the importer had established his claim by a preponderance of the evidence.

2. EVIDENCE, PRESUMPTION—COLLECTOR'S ACTION PRESUMPTIVELY CORRECT.

Where an invoice, required by the Treasury Department's regulation pursuant to paragraph 656, tariff act of 1913, to be certified before the American consul, consisted of two sheets seeming in themselves to be parts of the same document, and had the certificate on the first sheet only, the certificate attaches presumably to both sheets as one document. Having been so accepted and passed on without objection by the collector in the line of his official duty, this court must presume, in the absence of proof to the contrary, that the form it had when filed with him was the form it had when submitted to the consul.

## United States Court of Customs Appeals, December 2, 1916.

APPEAL from Board of United States General Appraisers, Abstract 39392.

[Affirmed.]

*Bert Hanson*, Assistant Attorney General (*Charles D. Lawrence*, special attorney, of counsel), for the United States.

*Charles E. McNabb* for appellee.

[Oral argument October 11, 1916, by Mr. Lawrence and Mr. McNabb.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

Four cabinets, one bureau, one writing table, four side tables, five tables, one sideboard, one dining-room table, one small chair, two chairs, two armchairs, one dressing chest, three dressers, two commodes, two buffets, and two screens, imported at the port of Baltimore, were assessed for duty by the collector of customs under various paragraphs of the tariff act of 1913. The importer protested that the goods were artistic antiquities more than 100 years old, and that they were therefore free of duty under that part of the free list of said act which, in so far as it is pertinent, reads as follows:

*Free list.*

That on and after the day following the passage of this act, * * * the articles mentioned in the following paragraphs shall, when imported into the United States * * * be exempt from duty: * * *

656. Works of art, * * * artistic antiquities, * * * which shall have been produced more than one hundred years prior to the date of importation, but the free importation of such objects shall be subject to such regulations as to proof of antiquity as the Secretary of the Treasury may prescribe.

The Board of General Appraisers sustained the protest as to the articles above described, and the Government appealed.

The board's decision was made by General Appraisers Waite and Brown on testimony submitted at Baltimore by the Government

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and the importer. Some of the testimony was taken by General Appraiser Hay and the rest of it by General Appraiser Sullivan. Neither of the appraisers before whom the witnesses for the Government and the importer appeared took part in the decision, and because of that the Government argues in effect that this court should review the testimony and come to its own conclusion as to the weight of the evidence without regard to the findings of fact made by the board. Whether or not the usual rule applicable to conflicting evidence should be applied in this case it is not necessary for us to decide, inasmuch as the review of the testimony which follows satisfies us that the board reached a conclusion which was supported by the weight of the evidence.

In support of the protest six witnesses testified that the merchandise was antique furniture more than 100 years old and based their opinion on the style of the furniture, the manner of putting it together, the wood of which it was composed, the color, and the evidences of wear. Five of these witnesses were dealers in antique furniture and one of them was a manufacturer of furniture, who was very frequently called upon to make over or repair old furniture. The Government on its part called five witnesses, two of them, Thomas and MacMullen, being customs examiners of furniture, with expert knowledge of antique furniture, and three of them, Vernay, Middlekoop, and Lenygon, being dealers in antique furniture.

As to 17 of the items in issue, there is no testimony on the part of the Government save that of Examiners Thomas and MacMullen. Thomas testified that item 931 was a bureau which was made up by taking apart an old William and Mary piece, and that the upper portion and the backing of the bureau were new; that item 939 was a cabinet to which had been added new legs and a modern decoration; that the carcass of item 956, a buffet, was old, but carried a modern molding; that a new molding had been applied to the dresser invoiced as item 962; that the carcass of item 980, a cabinet, was old, but that it had a new decoration and a new floor made of modern wood; that item 983 was a commode, the painting and gilding of which were modern and the legs of which were of white wood having modern decoration; that item 990 was a cabinet, made up, in his opinion, of old furniture, and that to it had been added new carving, new inlay, and a floor not 100 years old; that item 935, a dressing chest, was, in his opinion, a modern piece; that item 944, a writing table, was made of modern mahogany; that item 950, two chairs, and item 961, a buffet, were of modern oak and bore modern carving; that the leather, wood, and paintings of item 968, a screen, and the paintings, wood, and carving of item 973, another screen, were modern; that item 992, a table, was made of modern oak and that the inlay on



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it was modern; that item 953 was a modern reproduction of an Elizabethan table, one of the legs of which was scratched and showed new wood; that item 960 was a made-up table with modern carving; that item 975 was a table, the legs of which ran only to the apron instead of to the top, a feature which, in his opinion, was not characteristic of furniture of the period which the table was supposed to represent. Out of the 17 items covered by this testimony, 5 of them, represented by numbers 961, 931, 968, 973, and 983, were sent to New York for further inspection, and as to them Examiner MacMullen testified that all were recent reproductions and that no portion of any of them was over 100 years old. That these items at the time of importation were not antiques more than 100 years old is therefore supported as to 12 of them by only one Government witness and as to 5 of them by only two Government witnesses. In view of the fact that six witnesses for the importer testified positively that all 17 items represented furniture more than 100 years old, we can hardly say that the contention of the importer as to those items was not sustained by a preponderance of evidence.

As to items 911, 929, 947, 963, 978, 987, 988, 989, 942, 972, 976, and 909, five Government witnesses testified. Examiner Thomas said that item 911 was a cabinet of *old* and *modern* oak, with modern carving. Examiner MacMullen said that the piece was *entirely modern*. Vernay said that it was an oak buffet, presumably of the Elizabethan period, and that it was made out of *old wood*, but that carvings and *moldings* were new; that it was entirely new work *with the exception of the doors and possibly the back*. Middlekoop said that it was a newly constructed cabinet and that it was made of *old wood* which had been carved over. Lenygon declared that the article was an oak buffet, *the large or body portion of which might be old*, but that the lower part of it was quite new.

Thomas said that item 929 was a side table, with modern carving. Vernay declared that the piece was a William and Mary table of walnut, the *carcass of which was old*, reveneered, and to which had been added a *new top*, *new legs*, and a *stretcher*. Middlekoop stated that the article was an *old William and Mary* table which had been *repaired and reveneered*. Lenygon held that the article was a walnut table inlaid with various woods, and that the piece was *entirely modern*.

Thomas was of the opinion that item 947 was a table with *four new legs* and that the *carving* on it was modern. Vernay said it was an oak table made out of *old wood*, somewhat correct in design, but was an *entirely modern piece* and lacking in antiquity. Middlekoop declared that the table was a *new one*. Lenygon testified that the article was an oak table, quite new. He said that the *underside* of the top showed that the table had never been handled or moved

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about in any way and showed no signs of friction, but why he expected to find any particular evidences of friction on that part of the table rather than on the top was not explained. He also said that the *wood* of the table as it stood could not have been exposed to the air very long, and from that we infer that he was of the opinion that the wood was modern.

Thomas declared that item 963 was a dresser composed of a *new carcass* with new moldings, and in this he was corroborated by MacMullen. Vernay said that the *body or base of the dresser was produced more than one hundred years ago;* that it was originally a plain piece of furniture, to which had been added moldings, half-split turnings, and new handles, which gave it the character of a work of art. Middlekoop held that the article was an *old Flemish kitchen piece*, to which had been added new moldings, new carvings, and cherry wood handles. He added that the piece itself was more than one hundred years old, but that the alterations increasing its value had been made later. Lenygon held that the dresser was an *old plain piece of furniture* to which had been added new carvings and moldings, thereby rendering the whole thing a new piece.

Thomas testified that item 978 was a dresser, the *inlay* and *drawer linings* of which were new. Vernay held that the article was a William and Mary dresser, the *body part of which was made out of an old oak dresser, veneered over and inlaid on the top.* He said that the *drawer and stretcher were new.* Middlekoop said that the *framework of the article was old*, but that it had been *reveneered and that new legs had been added.* Lenygon described the article as a long dresser of inlaid walnut, and said that the piece was *quite new, not old at all.*

Thomas stated that item 987 was a sideboard not 100 years old; that item 988 was a dining-room table made up of an old nest of tables and part of a side table, to which had been added new framework and new decoration; that item 989 was a sideboard made up partly of an old carcass and that the inlay on the piece was new. Examiner MacMullen stated that item 988 was entirely modern. Vernay said that all three articles *were of the latter part of the eighteenth century or the beginning of the nineteenth*, but that they had been *reinlaid and trimmed up*, which spoiled them from the standpoint of the collector. Middlekoop declared that the three pieces were a Georgian set and were all *new work made of old boards* which had been inlaid later than the rest of the work. Lenygon inclined to the view that the set was mahogany furniture made during the last quarter of the eighteenth century, to which *some* new inlaid parts had been added and incorrectly inserted on the edge of each piece of furniture.

Thomas testified that item 942 was a commode and a modern piece of *new material* and *new design.* Vernay said that it was an Adam satinwood cabinet, with an *old carcass* reveneered and bearing entirely

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new decorations. He said that the style on the old top part had not been carried out and that the execution was wholly wrong. Middlekoop held that it was a commode which was *entirely new*. Lenygon declared that it was a satinwood cabinet on a stand; that the table was quite new, of new wood, and bore new veneering, new painting, and new gilding.

Thomas testified that two side tables, covered by item 972, were composed of modern mahogany, and two armchairs bearing the invoice number 976 were made of modern walnut. The testimony of Thomas as to these pieces was confirmed by Vernay, Middlekoop, and Lenygon. MacMullen said that item 976 was entirely modern.

Thomas testified that item 909 was a small chair, the design of which was one for which he could find no authority. He said the piece was not over 100 years old. Vernay described the chair as one having two square legs in the back, two bulbous legs in the front, and stated that although it may have existed, he had never heard of or seen such a thing before. Middlekoop declared positively that the chair had not been made more than 100 years ago. Lenygon described the chair as one covered with leather and having two heavily carved legs in the front. He said that the chair *might have been an original chair* with two front legs added, but as the two front legs were the feature of the chair, and were not old, he considered further inspection of the chair useless for the purposes of determining its antiquity.

As to all of the items which we are now discussing, save items 972 and 976, the Government witnesses, with the exception of MacMullen, gave in detail the physical characteristics upon which they based the opinion that none of the items could be regarded as antique furniture. These witnesses, however, although actuated by the best of good faith, were markedly at variance as to those characteristics of the furniture which all of them regarded as important in determining its antiquity, and that fact of course detracts from the weight which might otherwise be accorded to their testimony. On the other hand, the six witnesses of the importer, who were, we think, fully as well qualified to speak on the subject as the witnesses for the Government, and who were governed by substantially the same rules in determining the antiquity of the furniture, were a unit in saying that the several pieces were antiques more than 100 years old. With that as the state of the case, we do not think the court would be justified in saying that the board erred in holding that the importer had established his claim by a preponderance of evidence.

Paragraph 656, under which it is claimed that the goods in controversy were entitled to free entry, provides that free importation of such objects shall be subject to such regulations as to proof of antiquity as the Secretary of the Treasury may prescribe. In

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accordance with that provision, the Secretary of the Treasury required that there should be attached to the invoice a certificate of the foreign seller or shipper, certified before the American consul at the place of shipment, declaring when and where the articles claimed to be antiquities were produced and from whom and when they were purchased. The Government contends that the certificate filed by the importer with the invoice refers to none of the items here in controversy, except items 931, 980, 944, 972, and 987. This contention is based upon the fact that none of the other item numbers appear on the sheet which contains the certificate of the consul general, but are set out on a separate sheet attached thereto. Both sheets are signed by the seller, S. E. de Haas, and without doubt the certificate of the seller embraces all the articles involved and certifies not only the place where and the time when produced, but also the time when and the person from whom purchased. The only question, therefore, that can arise with reference to the certificate is whether the second sheet was submitted to the consul with the first sheet. It is urged that presumptively it was not so submitted, because the consular certificate is attached to the first and not to the second sheet, but that fact can not be regarded as raising a presumption against the verity of the document if the document itself discloses that the certificate was probably placed where it was for a reason consistent with good faith and with the authenticity of the paper. Such a reason, we think, is found in the fact that the first sheet is a printed form which has space for 11 items only and for the printed consular certificate. Evidently the 64 items covered by the invoice could not all appear on the first sheet, and it was quite natural that the seller, presumably a merchant, should attach another sheet, upon which he entered the 53 items for which there was no room on the first sheet, and equally natural that the consul should avail himself of the printed form on the first sheet rather than go to the trouble of writing out a consular certificate on the second sheet. Moreover, the fact that the column headings of both sheets are the same; that the items on both sheets are apparently written on the same typewriter with the same ink; that there is a reference in the certificate to the consular invoice by number, which invoice covers all the articles on both sheets; that one of the four pieces invoiced as a "complete suite" is entered as the last item on the first sheet of the certificate and the other three items as the first three items on the second sheet warrants, at least *prima facie*, the presumption that both sheets formed part of the same document. But, however that may be, both sheets were presented to the collector attached together as one document. He accepted both sheets without question as part of the same certificate, and evidently considered that the Treasury regulations had been complied with as to all goods mentioned therein, because

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he passed upon the claim that the articles were antiquities. If the document itself raised a doubt as to its authenticity, it was the duty of the collector to satisfy himself that it was what it purported to be before accepting it as genuine. Presumably he did his duty in that behalf and did satisfy himself that the paper, after it had left the hands of the consul, had not been tampered with or altered or changed in any material particular. But, whether he did or not, the fact remains that, in the line of his official duty, he accepted the certificate as genuine; and in the absence of proof to the contrary we must presume that the form it had when filed with him was the form it had when submitted to the consul.

The decision of the Board of General Appraisers is *affirmed*.

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## (T. D. 36874.)

### *Orchids—Mother bulbs.*

MALTUS & WARE *et al.* *v.* UNITED STATES (No. 1722).

1. CONSTRUCTION, CONTEXT AS AID TO—PARAGRAPH 210, TARIFF ACT OF 1913.

The enacting clause of paragraph 210, tariff act of 1913, provides for begonia, Iris Kaempferri, canna, and dahlia bulbs. Such types of plant life are not true bulbs. The term bulbs, as used in the proviso, can not be given a meaning different from that which it has in the enacting clause, and from that it follows that the designation bulbs as used in the proviso is broad enough to cover plant growths which, though not true bulbs botanically speaking, are nevertheless either popularly or commercially known as bulbs.

2. CONSTRUCTION, PARAGRAPH 210, TARIFF ACT OF 1913—"MATURE MOTHER FLOWERING BULBS."

A "mature mother flowering bulb" is a bulb which has reached its full development and has no other function to perform save that of throwing out other bulbs, which, under normal conditions, will flower and in their turn develop daughter bulbs.

3. CONSTRUCTION, PARAGRAPH 210, TARIFF ACT OF 1913—"IMPORTED EXCLUSIVELY FOR PROPAGATING PURPOSES."

When Congress limited the proviso of paragraph 210 to "bulbs imported exclusively for propagating purposes," it had in mind the use of the bulbs and not the business of the importer; and so the fact that bulbs fit only for such purpose were sold, and not used, by the importer would not prevent their falling within the proviso.

4. ORCHID PLANTS, HOW CLASSIFIABLE—"MATURE MOTHER FLOWERING BULBS."

Orchid plants, known as Cattleyas, which at the time of importation had already flowered, would never flower again, and were useful for no commercial purpose except propagating, and which, although not true bulbs, were known to the trade as orchid bulbs, were entitled to free entry under the proviso to paragraph 210, tariff act of 1913, as mature mother flowering bulbs imported exclusively for propagating purposes.—Maltus & Ware *v.* United States (6 Ct. Cust. Appls., 376; T. D. 35920).

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## United States Court of Customs Appeals, December 4, 1916.

APPEAL from Board of United States General Appraisers, Abstract 39618.

[Reversed.]

*Allan R. Brown* for appellants.

*Bert Hanson*, Assistant Attorney General (*John J. Mulvaney*, special attorney, of counsel), for the United States.

[Oral argument October 26, 1916, by Mr. Brown and Mr. Hanson.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

Orchid plants bearing the name Cattleyas were classified by the collector of customs at the port of New York as orchids and assessed for duty at 25 per cent ad valorem under the provisions of paragraph 210 of the tariff act of 1913, which paragraph is as follows:

210. Orchids, palms, azalea indica, and cut flowers, preserved or fresh, 25 per centum ad valorem; lily of the valley pips, tulips, narcissus, begonia, and gloxinia bulbs, $1 per thousand; hyacinth bulbs, astilbe, dielytra, and lily of the valley clumps, $2.50 per thousand; lily bulbs and calla bulbs or corms, $5 per thousand; herbaceous peony, Iris Kaempferri or Germanica, canna, dahlia, and amaryllis bulbs, $10 per thousand; all other bulbs, roots, root stocks, corms, and tubers, which are cultivated for their flowers or foliage, 50 cents per thousand: *Provided*, That all mature mother flowering bulbs imported exclusively for propagating purposes shall be admitted free of duty.

The importers claimed that the goods were wild orchid bulbs and that they were free of duty under the proviso to the paragraph cited.

The Board of General Appraisers overruled the protest and the importers appealed.

In Maltus & Ware *v.* United States (6 Ct. Cust. Appls., 376; T. D. 35920) we passed upon merchandise identical with that here involved, and the evidence and issues upon which we there reached a conclusion are, we think, again submitted for our consideration by the present appeal. However, inasmuch as the learned Assistant Attorney General very earnestly urges that this court erred in its original decision, we prefer to review the instant record on its merits without taking into consideration our previous holding. A review of the matter *de novo* will afford the opportunity of correcting any error which might have been committed and which otherwise might be perpetuated. Besides all that, such a review seems to be justified by the fact that the Government appears to have relied largely in the former case on the claim that the Cattleyas, as imported, were not true bulbs and not so insistently as now on the claim that the goods did not meet the other requirements of the proviso.

The testimony for the Government establishes without contradiction that botanists do not recognize the goods imported as true bulbs, but as pseudo or false bulbs, and consequently the first question to be

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determined is whether the proviso to paragraph 210 is broad enough to cover plant growths which, though not true bulbs, botanically speaking, are nevertheless either popularly or commercially designated as bulbs. We think it is. The enacting clause of paragraph 210 in terms provides for begonia, Iris Kaempferri, canna, and dahlia bulbs, and as it very clearly appears from the testimony of the botanists Nash and Rusby that such types of plant life are not true bulbs, it follows that the enacting clause at least was not limited in its operation by Congress to true bulbs. As there is nothing which would justify us in saying that the word "bulbs" in the proviso was used in any other sense than that which obtained in the enacting clause, we must conclude that the proviso is not limited to true bulbs.

The next proposition which presents itself is whether the goods in controversy are commercially known as bulbs, and as to that we are decidedly of opinion that the evidence establishes without contradiction that they are so known.

On the use of the word "bulb" in the trade the witness George L. Freeman testified on behalf of the importers as follows:

Q. (By Mr. Brown): How long have you been dealing in this country at wholesale?—A. I have been treating directly with the trade since 1905.

* * * * * * *

Q. Your business is throughout this country, I understand you to say?—A. Extends all over the country; in every State, practically.

Q. How long has that been true?—A. Every State has not been true until 1909 I began shipping those.

Q. Was it true at and immediately prior to the passage of the present tariff act of October 3, 1913?—A. Oh, yes.

Q. At that time please state how these articles Exhibit 1 were known in trade and dealt in.—A. At that particular time?

Q. In the summer of 1913, before October 3?—A. These were known as orchid bulb stock, imported for propagating purposes, largely among commercial people and to a certain extent among private people, but private people are only interested in an established bulb that they may see so as to know what they will be. We do not know exactly what this may develop. It may develop a perfect flower, or a flower not exactly as nice a color as some. There may be many of these bulbs that after they are developed are thrown away on account of their imperfectness.

Q. How are they sold—by the dozen, or pound, or case, or what?—A. These are sold by the dozen, by the case, and by the hundred, and they represented about the number of bulbs in a cluster which we have adopted in this country in this way—3 to 5 bulbs to a cluster, 8 to 10, 9 to 15, and so on.

Q. The case will be sold as containing so many bulbs on a plant?—A. The case represents so many bulbs or a quantity of good bulbs. For instance, for 400 bulbs we ship out to the grower 400 bulbs after we have trimmed off all the imperfect ones.

Q. The bulb, then, is used as the unit in selling?—A. That is the unit in selling.

Q. Is that word "bulb" you have used used in the trade?—A. It has been used in the trade since I have been acquainted with it, always, without excep-

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tion. There is no other expression used in regard to these plants, these importations, rough irregular stock, no other expression.

Q. That is true in different parts of the country?—A. All the same all over.

On cross-examination the witness Freeman testified in part as follows:

Q. When you speak of calling that portion of the plant that you have referred to as a bulb a bulb, do you do that only in a commercial sense?—A. Speaking of the bulbs? We have to sell these plants as bulbs. They are spoken of mainly in the trade as bulbs. There is nothing else that describes that pieced plant or the whole plant or whatever it may be; there is no describing it except bulbs.

Q. (By Judge WAITE.) What is it, bulb or bulbs?—A. Each one is a bulb.

Q. Sell them by the hundred?—A. Sell them by the hundred as a case, by the case.

Q. (By Mr. ISENSCHMID.) You say you can not call them by any other name. What is the objection to calling that a plant?—A. Of course it is a plant; a plant consists of 2 bulbs, 4 bulbs, 6 bulbs, 10 bulbs plant; 100-bulb plant if you choose.

Q. You contend they are all plants, not bulbs?—A. All these have bulbs we are talking about.

John E. Lager, on behalf of the importers, testified as follows:

Q. (By Mr. BROWN.) What is your business?—A. Orchids.

Q. How long have you been in that business?—A. Since 1896.

Q. What has been your experience in the business; buying, selling, collecting, growing, or what?—A. I was collecting previous for five years in South America.

Q. Since 1896 what have you been doing?—A. Growing and selling orchids; nothing else.

* * * * * * *

Q. Now, you say you have dealt in these goods in the United States since 1896?—A. Yes.

Q. At wholesale?—A. Both wholesale and retail.

Q. In this section of the country or throughout the United States?—A. All over the country and occasionally abroad.

Q. During that time have you found that the term "bulb" is used in connection with these goods?—A. As far as I remember we never designate them as anything else.

Q. (By Judge WAITE.) He is referring to the trade now?—A. Yes; we quote them at so much a case, so many bulbs, case of 400 bulbs or plants with six or eight bulbs.

Cross-examination:

Q. This part they refer to as a bulb, do you know whether they are called botanically a bulb, or do you only refer to it in a business or commercial way?—A. No; that occurs in the works on orchids, if I am not mistaken. I don't know of any other designation, because that is the way everybody I ever heard would speak of Cattleyas or other orchids; they all would say bulbs. There is no other word that I know of.

Louis F. Carrillo, on behalf of the importers, testified as follows:

Q. Look at Exhibit 1 there—do you recognize what that is?—A. That is a Cattleya.

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Q. Where does that come from?—A. South America; Colombia.

* * * * * * *

Q. You stated that a portion of those consisted of bulbs. What is the portion which you call bulbs?—A. The bulb is the thick portion.

Q. Where do you get that name?—A. From general use by everybody I have ever met who knows anything about this business.

Q. How long have you dealt in the article?—A. Ten years.

Q. Do you sell them in that condition?—A. Sell in that condition and buy, too.

Q. Throughout the country?—A. Throughout the country.

Q. How are they sold—by the dozen, or, what is the unit?—A. As a rule, I sell them by the bulb. So many cases so many bulbs.

Q. Is that the word which is used in describing the article commercially?—A. That is the word used by everybody who buys such orchids.

Q. How long has that been in existence?—A. Sixteen years now.

Q. Without any variation?—A. Without any variation.

This testimony, we think, warranted a finding in the original case and warrants a finding in this case that the goods must be regarded for tariff purposes as bulbs irrespective of whether they are in fact botanically bulbs or popularly known as bulbs.

The fact that they are bulbs, however, is not enough to bring them within the proviso to paragraph 210. In addition, they must be flowering bulbs, mother bulbs, mature bulbs, and bulbs imported exclusively for propagating purposes.

There is no evidence showing or tending to show that the terms "mature," "flowering," or "mother" had any special commercial signification, and we must regard them as expressions of description to which must be given the common, popular meaning ascribed to them when applied to plants. Commonly and popularly speaking, the term "mature" means fully developed, and a mature bulb would therefore signify a bulb which has reached its full development. A mother bulb is one which is the progenitrix of other bulbs, a bulb which has so far advanced that the principal function left for it to perform is that of producing other bulbs like itself. That the botanist uses the expression "mother bulb" in the same sense as that which would be popularly assigned to it is apparent from the testimony of the Government witnesses Rusby and Nash. Rusby testified that mother bulbs are bulbs which produce other bulbs known as daughter bulbs. He said that the mother bulb is consumed in the process of developing its flower and sending out daughter bulbs. Nash stated that the mother bulb produces leaves and sometimes flowers, and when that is done it throws out little bulbs and thus gets its name mother bulb. When the mother bulb has completed its life history it dies, and the process is continued in the smaller bulbs which it has made.

As commonly used, flowering bulbs may signify either bulbs in flower or bulbs which at some stage of their plant development will produce flowers. In view of the fact, however, that the proviso is

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limited to mother bulbs and to bulbs imported exclusively for propagating purposes, we think the term "flowering bulbs" as therein used must be interpreted to mean not bulbs in flower but bulbs which, though they will not flower themselves, are nevertheless capable of producing other bulbs which will flower.

From all of this we conclude that a mature mother flowering bulb is a bulb which has reached its full development and has no other function to perform save that of throwing out other bulbs which under normal conditions will flower and in their turn develop daughter bulbs.

We now come to the consideration of whether the merchandise imported and commercially known as bulbs falls within the descriptive terms of the proviso; that is to say, Are the bulbs mature? Are they flowering bulbs? Are they mother bulbs? Three witnesses—Freeman, Lager, and Carrillo—were called for the importers and gave testimony as to the nature, condition, and character of the bulbs and the purpose for which they were imported.

Freeman testified as follows:

Q. State further as to the condition of this article, Exhibit 1, at the present time—that is, as to those bulbs which we see here. Have they flowered yet or what is their condition?—A. These bulbs, some of them, have flowered; some have not. Those that have will never flower again, but each of them will produce a bulb if rightly established that will flower. *These bulbs will never flower again under any circumstances.*

* * * * * * *

Q. (By Mr. ISENSCHMID.) Can you tell me what is known as a flowering bulb?—A. A flowering bulb is a new shoot that produces a flower.

Q. Direct?—A. Direct; yes. These bulbs are not flowering bulbs; they have flowered.

Q. Are flowering bulbs ever imported from South America?—A. *These are flowering bulbs that have been imported from South America for the purpose of growing bulbs that will flower again.*

Q. Then do you call those flowering bulbs?—A. We do not designate them as flowering bulbs; we designate them as strong, well-developed bulbs.

Q. Are flowering bulbs ever imported from South America from this locality—flowering orchid bulbs?—A. *Flowering orchid bulbs—never that I know of.*

Q. Are orchids as imported ready for flowering—do flowers come from new shoots?—A. Flowers come from new shoots; yes.

Q. Not direct from the flowering bulb?—A. Not direct from the old bulbs.

Q. (By Judge WAITE.) I understood you to say you did not bring those in—bulbs (which) are ready to flower?—A. *No; we do not bring in any bulb that is ready to flower.*

Q. (By Mr. ISENSCHMID.) Can you tell me what s known as a flowering ported be called flowering bulbs?—A. *These bulbs that we bring in from South America will not flower; never would.* Of course they might at rare exceptions, like in a thousand plants you might get one plant that will flower, but they are brought in for the purpose of growing bulbs that will flower.

* * * * * * *

Q. *You gather them after they have matured and flowered?*—A. Yes.

Q. There is no bulb growing then?—A. There is no bulb growing then. *We gather them after they have matured and flowered.*

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It will be noted that this witness uses the term flowering bulbs in the sense of bulbs in flower and also in the sense of bulbs which are capable of producing flowers.

Lager testified as follows:

Q. Can you state what the Exhibit 1 is, what condition it is in?—A. This is what we call the Cattleya plant. The mother bulbs are these. *They have flowered—they are matured*—without which we can not get any new leads. New leads are very slow coming out, and they must come from an old bulb that has already matured.

Q. The new leads you speak of come from the base of the bulb out of the roots?—A. Yes. In that plant there—Exhibit B—it is more advanced.

Q. Now, for what is that article Exhibit 1 used?—A. It is grown for flowers.

Q. Will that produce flowers?—A. The new shoots. *The plant itself is absolutely valueless. As long as that plant remains in that state it has no value whatever until it produces these new shoots, from which we get a new bulb and consequently flowers.* These other bulbs are probably put there to sustain the plant in times of stress—drought, etc.—and these bulbs will sometimes sustain the life of the plant. That is the only purpose they serve. Then sometimes one mother bulb or plant will produce two of these shoots—one on each side of it. The plant is, of course, no good to us whatever unless we can propagate it and produce new shoots, and then from the new shoots we get flowers.

Cross-examination:

Q. Do you agree with the statement of the former witness that the bulb as referred to, without the leaf growing out of the top of it, can be used for the purpose of propagating?—A. Yes, I do. That is, under certain conditions; if the man has patience and nothing to do. We do it. We probably have several hundred hung up. We forget all about them, and after a few years they make a plant.

The witness Carillo testified as follows:

Q. Look at the Exhibit 1 there. Do you recognize what that is?—A. That is a Cattleya.

* * * * * * *

Q. Can you tell whether those bulbs have flowered or not?—A. Yes, sir.

Q. Have they?—A. No, sir; they have not.

Q. What?—A. No, they have not. The old bulbs have flowered, but the young bulbs have not.

Q. Which are the young bulbs?—A. These with the leaves.

Q. Will the old bulbs flower?—A. No; they will never flower again.

* * * * * * *

Q. Do you know what use that exhibit is put to? You say it is known as bulbs. Will it flower again?—A. No. That plant has to be propagated in order to form new bulbs—new flowering bulbs.

Q. Is there any other use for it practically or commercially?—A. No, not that I know of. To produce new bulbs for flowers.

That testimony was not impeached, and if fairly construed establishes, we think, that the bulbs imported were not in flower; that they had flowered prior to importation; that they would not flower again; and that they had no important function to perform other

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than that of producing new bulbs which would flower as they themselves had done. We must therefore hold that the bulbs at the time of importation were mature mother flowering bulbs within the meaning of the proviso to paragraph 210.

The board, in its decision overruling the protest, held that the goods were not imported exclusively for propagating purposes. We construe that finding to mean that the merchandise was not imported for the exclusive purpose of multiplying, spreading, or continuing, by natural or other means, the breed, variety, or species of bulb imported. (See "Propagate," Standard Dictionary.) Putting that construction upon the finding, we think that it was not sustained by the evidence. The testimony of the importers was uncontradicted that the Cattleyas in issue were, when imported, valueless for any purpose other than that of generating new bulbs which would flower, and from that it would follow that they must have been imported exclusively for propagating purposes. Of course, in the sense that the goods were imported to be sold for the purposes of propagation, it might be said that they were not imported exclusively for propagating purposes, inasmuch as they were imported for *sale* as well as propagation. We do not think, however, that any such conclusion as that is warranted by the language of the proviso under discussion. The proviso on its face was evidently intended to encourage the propagation of certain classes of bulbs rather than to favor certain classes of importers; and certainly that intention could scarcely be brought to a practical realization by admitting free of duty bulbs when imported by persons intending to propagate them and excluding from free entry the very same class of bulbs when imported to be sold for propagation. In our opinion, when Congress limited the proviso to bulbs imported exclusively for propagating purposes, it had in mind the use of the bulbs and not the business of the importer.

We hold, first, that the goods are bulbs, because they are commercially so known and designated; second, that they are mature bulbs, because they are fully developed; third, that they are flowering bulbs, because they belong to that class of bulb which is capable of producing flowers; fourth, that they are mother bulbs, because they are capable of producing and do produce other bulbs like themselves which will flower; fifth, that they are imported exclusively for propagating purposes, because they are imported for the purpose of propagating bulbs which will flower, and are absolutely valueless for any other use.

The decision of the Board of General Appraisers is *reversed*.

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CONCURRING OPINION.

MONTGOMERY, Presiding Judge: While concurring fully in the reasoning of the main opinion, I think the decision might be, and in

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furtherance of orderly procedure should be, rested upon the doctrine of *res adjudicata* as to Maltus & Ware and on the doctrine of *stare decisis* as to the other.

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(T. D. 36875.)

*Bagging patches.*

TEXAS & PACIFIC RAILWAY CO. *v.* UNITED STATES (No. 1726).

1. CONSTRUCTION, PARAGRAPH 408, TARIFF ACT OF 1913—"PRINTED."

The term "printed," as used in paragraph 408, tariff act of 1913, applies only to such printing as affects the character or condition of the woven fabrics as such, whether by way of ornamentation or exploitation, or for other like purpose. The conspicuous stenciling of the consignee's name upon a fabric for purposes of temporary identification does not make it a printed fabric.

2. EVIDENCE—JUDICIAL NOTICE.

When a fabric is in evidence, and it is apparent from a mere examination in the light of common knowledge and experience, without technical skill and without the aid of weighing or measuring instruments, that it weighs more than 15 ounces per square yard, this should be accepted as a proven fact.

3. JUTE PIECES FOR PATCHING COTTON BALES.

Pieces of woven fabrics of single jute yarns, about a square yard each in size, intended for use in patching cotton bales; not bleached, dyed, colored, stained, painted, or printed; not exceeding 16 threads to the square inch counting the warp and filling; and weighing not less than 15 ounces per square yard, are entitled to free entry as cotton bagging under paragraph 408, tariff act of 1913, and not dutiable as a woven article or manufacture of vegetable fiber under paragraph 284.

United States Court of Customs Appeals, December 2, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7888 (T. D. 36342).

[Reversed.]

*Comstock & Washburn* (*Albert H. Washburn* and *J. Stuart Tompkins* of counsel) for appellants.

*Bert Hanson*, Assistant Attorney General (*Robert Hardison*, special attorney, of counsel), for the United States.

[Oral argument October 31, 1916, by Mr. Washburn and Mr. Hanson.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

The merchandise in this case consists of so-called patches for cotton. These are pieces of woven fabrics composed of jute, about a yard square each in size, intended for use in patching cotton bales which have been torn or have been opened for sampling purposes.

They were assessed with duty at the rate of 35 per cent ad valorem under the provision for all manufactures of jute not spe-

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cially provided for contained in paragraph 284 of the tariff act of 1913.

The importers protested, claiming free entry of the merchandise under the provisions for cotton bagging, composed of jute, not bleached, dyed, colored, stained, painted, or printed, not exceeding 16 threads to the square inch, and weighing not less than 15 ounces per square yard, contained in paragraph 408 of the free list.

The protest was submitted upon the samples, together with oral testimony, to the Board of General Appraisers and was overruled. The importers appeal.

The following is a copy of the two paragraphs thus invoked by the respective parties:

284. All woven articles, finished or unfinished, and all manufactures of flax, hemp, ramie, or other vegetable fiber, or of which these substances, or any of them, is the component material of chief value, not specially provided for in this section, 35 per centum ad valorem.

408. Bagging for cotton, gunny cloth, and similar fabrics, suitable for covering cotton, composed of single yarns made of jute, jute butts, seg, Russian seg, New Zealand tow, Norwegian tow, aloe, mill waste, cotton tares, or other material not bleached, dyed, colored, stained, painted, or printed, not exceeding sixteen threads to the square inch, counting the warp and filling, and weighing not less than fifteen ounces per square yard; plain woven fabrics of single jute yarns by whatever name known, not bleached, dyed, colored, stained, printed, or rendered noninflammable by any process; and waste of any of the above articles suitable for the manufacture of paper.

In order to bring the merchandise within the provisions of the first part of paragraph 408, *supra*, it became incumbent upon the importers to prove (1) that it was bagging for cotton, or gunny cloth, or similar fabrics suitable for covering cotton; (2) that it was composed of single yarns of jute or other material named in the paragraph; (3) that it was not bleached, dyed, colored, stained, painted, or printed; (4) that it did not exceed 16 threads to the square inch, counting the warp and filling; and (5) that it weighed not less than 15 ounces per square yard.

The board found in favor of the importers upon the first four items above recited, but against them upon the fifth item. This single adverse finding resulted in the overruling of the protest by the board.

Upon a review of the oral evidence reported in the record and an inspection of the samples which are in evidence, we agree with the board in holding that the importers have proven the first four items of their contention as above set out. But we disagree with that portion of the board's decision which holds that the importers have failed to sustain the fifth or remaining item of their claim.

In respect to the four points above stated in which we agree with the board's decision, we may say that it is made certain by the

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testimony of the witnesses that the fabrics in question not only are suitable for covering cotton but also that they are designed exclusively for that use. It is made apparent by an inspection of the samples that the fabrics are composed of single yarns, and it is also manifest from an inspection of the samples that there are not more than 16 threads to the square inch in the fabric, counting both warp and filling. That the yarns are composed of jute is conceded. It furthermore appears from an examination of the samples that the fabrics in question are not bleached, dyed, colored, stained, painted, or printed. It is true that the consignee's name is conspicuously stenciled upon each piece thereof for purposes of identification only, but this fact does not bring the fabrics within the description of printed fabrics as used in the act. That term, like its associate terms, bleached, dyed, colored, stained, or painted, applies only to such printing as affects the character or condition of the woven fabrics as such, whether by way of ornamentation or exploitation, or for other like purpose. The stenciling of the consignee's name upon the fabrics for purposes of identification only is partial and temporary in character, and does not alter their real description for tariff purposes. Paragraph 344 of the tariff act of 1897 and paragraph 355 of the tariff act of 1909 contained the same enumeration as that now in question, namely, bagging for cotton, etc., not bleached, dyed, colored, stained, painted, or printed. In the Wolff & Co. case, G. A. 7098 (T. D. 30930), relating to such bagging, decided in the year 1910, the Board of General Appraisers held that stenciling such as that upon the present articles did not bring the bagging within the description of printed fabrics as intended by the provisions in question. The reenactment of the same provisions in the tariff revision of 1913, in the light of the decision just cited, may well be accepted as continuing the same interpretation of the term in question. See Mente & Co. case, G. A. 7705 (T. D. 35268).

The foregoing conclusions of the board, wherein the first four items of the importers' claim as above set out were sustained, were rested by the board in part upon the oral testimony of the witnesses and in part upon an examination of the samples which were in evidence.

As has been stated, the importers were bound under the issue to prove one other fact in addition to those already recited, namely, that the fabrics in question weighed not less than 15 ounces to the square yard. Upon this issue the board held against the importers, with the result of overruling the protest.

It appears from the record that the importers introduced no oral testimony at the trial in relation to the weight of the fabrics per square yard, but relied solely upon the samples in evidence as suffi-

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cient proof upon that subject. The board, however, held against this claim, and in that behalf said:

The testimony introduced on the part of the importers shows that these goods were intended for patching cotton bales. No evidence was introduced with reference to the number of threads or the weight of the fabric per square yard, as provided for in paragraph 408. We think it is evident from an inspection of the goods that there are less than 16 threads to the square inch, counting warp and filling, and that it is a plain woven fabric of a single yarn. We do not think, however, we are authorized to assume that the weight of the fabric is as required by the statute. There was no evidence, as stated above, upon this point. We must therefore conclude that the importers have not made out their claim under this part of the paragraph, as clearly it is essential to know the weight in determining the classification under the first part of paragraph 408.

We think the statement that there was no evidence before the board in regard to the weight per square yard of the fabrics is erroneous. The samples themselves were in evidence, and the board had already held that these taken alone were sufficient proof to the effect that the fabrics were composed of a single yarn, and that they had less than 16 threads to the square inch, counting the warp and filling. The samples were equally in evidence in respect to the weight of the fabrics per square yard, and an examination of them leads immediately and unmistakably to the conclusion that their weight is substantially in excess of 15 ounces per square yard. We think that this fact is palpable upon a mere examination of the samples, such as would be made by a common-law jury in the trial of such an issue without technical skill in such matters and without the aid of weighing or measuring instruments. It should therefore have been accepted as proven fact in the present case. It need hardly be said that no testimony was introduced by the Government regarding the weight of the fabrics per square yard, and it may be assumed that the importers considered the samples themselves to be sufficient proof in their behalf upon that question.

In Krusi *v.* United States (1 Ct. Cust. Appls., 168–169; T. D. 31213) this court, speaking by Smith, Judge, said:

Touching the point made by counsel for the importer that there is no evidence in the record showing or tending to show that the goods are appliquéd, it is only necessary to say that admittedly fair samples of the goods were introduced in evidence and that from an inspection of them it was possible for the board, as it is possible for this court, to determine whether or not they are appliquéd. When facts which determine the classification of imported merchandise are ascertainable and ascertained from an inspection of the goods themselves by the Board of General Appraisers, availing itself of the common knowledge and experience of which judicial notice may be taken, it can not be said that there is no evidence to support a finding of such facts. It would seem, however, that when the facts upon which proper classification depend are patent to the eye of the expert only and the board has no record evidence before it as to the



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nature, kind, and character of the goods, it can not classify them solely on its own expert knowledge and experience, and a finding based exclusively on such expert knowledge and experience would be without evidence to support it. To hold otherwise would make the board the final judge in many cases of contested classification and would in effect deprive the importer of the right of appeal conceded by Congress. In this case an inspection of the goods, aided by nothing more than the facts of common knowledge and experience of which judicial notice may be taken, shows that they are appliquéd, and the finding of the board to that effect was justified by the evidence which the goods themselves furnished.

See also Knauth *v.* United States (1 Ct. Cust. Appls., 178; T. D. 31216), United States *v.* Brewing Co. (1 Ct. Cust. Appls., 362; T. D. 31454), and United States *v.* Strauss Bros. & Co. (136 Fed., 185).

In Shallus *v.* United States (2 Ct. Cust. Appls., 456–457; T. D. 32205), Montgomery, Presiding Judge, speaking for the court, said:

We think, under these rulings, it became the duty of the board not to exercise expert knowledge—for expert knowledge is not necessary to determine whether this importation consisted of rags, as evidenced by the samples—but to determine as a question of fact, from an inspection of the samples, what the goods of which the samples were assumed to be fairly representative consisted of.

We believe the present question to be within the rule expressed by the foregoing decisions, and that the present samples, if inspected and examined in the light of common knowledge and experience, without the aid of measuring or weighing instruments, will readily be found to be heavier than 15 ounces to the square yard.

The decision of the board is therefore *reversed.*

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## (T. D. 36876.)

### *Cloth of mohair and wool.*

MARSHALL FIELD & CO. *v.* UNITED STATES (No. 1745).

1. "COMPONENT MATERIAL OF CHIEF VALUE," ASCERTAINMENT OF.

In determining which is the "component material of chief value" under paragraph 386, tariff act of 1913, of a fabric with a warp yarn of wool and a weft yarn of mixed wool and mohair, the proportion of wool in the weft yarn should be added to that composing the warp yarn. The fact that the weft yarn is in chief value of mohair does not warrant the assumption for this purpose that it is entirely mohair.

2. EVIDENCE, SUFFICIENCY OF.

The positive, uncontradicted testimony of one competent, credible witness that he found a certain yarn to contain a percentage of 25 or more of wool is sufficient to establish that as a fact in the case.

3. WOOL AND MOHAIR FABRIC, HOW DUTIABLE.

Cloth invoiced as "sateen" or "standard," with a warp yarn of wool and a weft yarn of mohair and wool, the wool in the two yarns being more valu-

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able than the mohair, is dutiable under paragraph 288, tariff act of 1913, as cloth in chief value of wool, and not under paragraph 308 as cloth in chief value of the hair of the Angora goat.

## United States Court of Customs Appeals, December 2, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7920 (T. D. 36487).

[Reversed.]

*Crim & Wemple* (*William L. Wemple* of counsel) for appellants.

*Bert Hanson*, Assistant Attorney General (*John J. Mulvaney*, special attorney, of counsel), for the United States.

[Oral argument October 24, 1916, by Mr. Wemple and Mr. Hanson.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

The merchandise now in question is certain cloth invoiced as "sateen" or "standard," and imported under the tariff act of 1913.

The goods were returned by the appraiser as woven fabrics composed in chief value of hair of the Angora goat. They were accordingly assessed with duty at the rate of 40 per cent ad valorem under the provisions of paragraph 308 of the act, for cloth in chief value of the hair of the Angora goat not specially provided for.

The importers protested, claiming assessment of the merchandise at the rate of 35 per cent ad valorem under the provisions of paragraph 288 of the act for cloth in chief value of wool not specially provided for.

The protest was submitted to the Board of General Appraisers and was overruled, General Appraiser Brown dissenting. The importers now appeal.

It thus appears that the sole issue before the board was whether the cloth in question is composed in chief value of wool or of the hair of the Angora goat.

The following provisions of the tariff act are copied for reference:

288. Cloths, knit fabrics, felts not woven, and all manufactures of every description made, by any process, wholly or in chief value of wool, not specially provided for in this section, 35 per centum ad valorem; * * *.

308. Cloth and all manufactures of every description made by any process, wholly or in chief value of the hair of the Angora goat, alpaca, and other like animals, not specially provided for in this section, 40 per centum ad valorem.

386. * * * And the words "component material of chief value," wherever used in this section, shall be held to mean that component material which shall exceed in value any other single component material of the article; and the value of each component material shall be determined by the ascertained value of such material in its condition as found in the article. * * *

It appears from the record that the warp yarn of the imported goods is composed exclusively of wool, whereas the weft yarn is composed of mixed wool and Angora goat hair. It appears that the mixed yarn, taken as yarn, is more valuable than the all-wool yarn.

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It furthermore appears that the mohair content of the mixed yarn is more valuable than the wool content thereof. It is to be regretted that the record does not disclose with greater certainty whether the mixed yarn may be exactly separated into its constituent materials so as to discover the respective proportions of wool and mohair contained therein. The board held, in the majority opinion, that the testimony failed to show the proportions of wool and mohair composing the mixed yarn. We think, however, that the testimony sustains the claim that such a separation is practicable, and that the mixed yarn is shown to consist of about one-fourth wool and about three-fourths mohair. We are not unmindful in this particular of the rule of law which favors the board's finding of fact based upon conflicting testimony in appealed cases. The immediate question, however, does not involve conflicting testimony nor require a decision upon the weight of the evidence or the credibility of witnesses. It depends solely upon a reading of the uncontradicted testimony of a single witness, who is conceded to be truthful and reliable.

This witness was the Government chemist, J. A. Hynes, who testified in part as follows:

Q. And shortly after this merchandise was first imported did you analyze this sample?—A. I did.

Q. And what was the result of this first analysis?—A. It was reported to the examiner and classified as consisting of a mohair weft and wool warp, mohair chief value.

Q. And shortly after that analysis did you conduct an investigation to ascertain more fully the manufacture and construction of this merchandise?—A. I did.

Q. And after you had received this report did you analyze this fabric again in order to determine the material of chief value?—A. No; but analyzed for the purpose of verifying certain claims set forth by the manufacturer in his report to our confidential agent who investigated the case.

Q. Recite one of the cases you verified.—A. The special commissioner, Chance, of London, through one of his employees or agents inspected the manufacture of this merchandise and reported it as follows: To consist of a wool warp with wool and mohair weft, the mohair and wool being spun together to compose the weft threads. In this report he submitted certain figures as to the value of the warp yarns which were wool and as to the value of the wool and the mohair composing the weft yarns. My specification in this was for the purpose of determining if the weft yarns did actually contain wool and mohair, and these weft yarns were found to contain wool and mohair.

Q. In your first analysis did you or did you not report that the weft yarns were composed entirely of mohair?—A. Yes.

Q. (By General Appraiser McClelland.) Did you find anything in your second analysis which led you to change your opinion?—A. Yes; when the first analysis was made we mounted a very small quantity on a microscopic slide, and inasumch as it is not customary to mix wool and mohair in one thread, the presence of mohair in the weft yarns led me to believe that the yarn was composed entirely of mohair.

Q. Did you actually find wool on your second analysis?—A. Oh, yes.

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Q. In the weft?—A. In the weft; yes.

Q. (By Mr. NAY.) You have been called upon from time to time to make analyses of fabrics, for instance, composed of cotton and flax?—A. Yes.

Q. And in determining the component material of chief value your method is to separate the flax fibers from the cotton fibers?—A. Oh, yes.

Q. In analyzing this fabric by separating the wool of the sheep from that of the wool of the Angora goat and determining the value of the two, which would be the component material of chief value?—A. It would be impossible, of course, to separate the wool of the mohair in the weft yarn, because they are spun together in one thread.

* * * * * * *

Q. (By General Appraiser McCLELLAND.) In view of your discovery upon the second analysis that there was some wool in the weft, were you able to say which was the material of chief value?—A. In the fabric as an entirety?

Q. As an entirety?—A. My judgment would be that wool would be the chief value, taking, of course, the combination wool of the warp and the weft on the one hand as against the mohair in the weft of the other; that would be my judgment.

Q. Suppose you had had the information on the first analysis that you had on the second, what would your return have been?

Mr. MULVANEY. Same objection to that question.

Overruled. Exception.

A. Had I the information of the first case that I had in the second case I would have reported it as wool chief value.

Q. (By Mr. MULVANEY.) And to do that you would have separated the wool from the mohair in the weft thread?—A. I would have had to arrive at the conclusion. I would reason thus: The warp thread, which is composed entirely of wool, is nearly the same weight and nearly same value as the weft threads, hence the presence of a fairly good percentage of wool in the weft, plus which is already in the warp would unquestionably throw it on the side of wool.

Q. What do you mean by fairly good percentage?—A. 25 or better.

Q. Was that percentage present in this?—A. So far as one could judge by microscopic examination.

Q. You were satisfied there was a fairly good percentage of wool in that weft thread?—A. Yes.

We understand the witness to say, in the foregoing testimony, that when he first examined the present merchandise he concluded that the weft consisted of mohair only, and that the warp was all wool, but that an investigation in which he took no part was set on foot, which resulted in a report that the weft thread was in fact composed in part of wool; that thereupon he made a personal examination of the weft thread again by the aid of a microscope, and perceived that it was composed of wool fibers to the extent of 25 per cent or more.

It therefore appears that the warp yarn of the imported cloth is all wool, that the weft yarn is about one-fourth wool and three-fourths mohair, and that the wool contained in the two yarns if taken together exceeds in value the mohair contained in the single yarn. Upon this state of fact we hold that wool is the component material of chief value in the cloth in question, and that it should

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accordingly be assessed with duty as cloth made in chief value of wool under paragraph 288, *supra*, as claimed in the protest.

The Government, however, contends that even if the foregoing facts be accepted as a basis of judgment, the merchandise must nevertheless be classified as cloth composed in chief value of mohair. In that behalf the Government cites the provisions of paragraph 386, *supra*, that "the value of each component material shall be determined by the ascertained value of such material in its condition as found in the article," and contends that the wool and mohair are found in the woven cloth in the condition of spun yarns, and hence that the yarns as such must be compared with one another in value, and the more valuable yarn must be accepted as the component material of chief value in the cloth. The Government further contends that in making a comparison of values between the two kinds of yarn in the cloth the mixed yarn should be considered as if composed entirely of mohair, since mohair is in turn its component material of chief value. According to this claim the cloth itself would of course be found to be in chief value of mohair, since the mixed yarn, as above stated, is more valuable than the all-wool yarn, and mohair is the constituent of chief value in the mixed yarn. In other words, according to this method of comparison the entire value of the mixed yarn, including both its mohair and wool content, would be accredited to the mohair content thereof alone, since mohair is the more valuable constituent thereof, and the woven goods accordingly would be held to be composed in chief value of mohair, notwithstanding the fact that the wool content of the two yarns, and therefore of the cloth itself, is more valuable than the mohair content thereof.

We are unable to find any authority for this claim of the Government. The rates of duty which are imposed upon cloth by the paragraphs above copied differentiate between such cloth as is composed in chief value of wool, and such as is composed in chief value of Angora goat hair. Accordingly the wool content of the present cloth must be compared in value with the mohair content thereof, in order to determine whether wool or Angora goat hair is the component material of chief value therein. As stated above, such a comparison is practicable in the present case notwithstanding the fact that wool appears in both the warp and weft of the cloth, while mohair appears in the weft only. It is true that the value of such material is to be ascertained in its condition as found in the cloth, hence the cost of bringing the wool to that condition should be added in with the value of the wool as a component material thereof, and the cost of bringing the mohair to the same condition should be similarly treated. In the case of the mixed yarn such cost as thereby accrued upon the two materials in common should, in the absence of any specific showing

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to the contrary, be divided between the respective materials in proportion to their relative quantities as constituents thereof, since the common cost would have accrued upon the several materials in that proportion. In this manner the legislative purpose of comparing the value of the wool content of the cloth with the value of the Angora goat hair content thereof, for the purposes of classification under paragraphs 288 and 308, *supra*, would be complied with. On the other hand, according to the Government's contention, the comparison of value in the present case would not be between the component materials which are named in the competing paragraphs, to wit, wool and Angora goat hair, but between yarns as such. If, however, we adopt such a method of comparison as results in adding the value of other and different materials to one of the two competing materials in question, the legislative purpose would be defeated, for in such case the dutiable cloth might be classified as in chief value of one material when in fact it would be composed in chief value of an entirely different one.

The present question is identical with that decided by the Board of General Appraisers in the case of McCutcheon, G. A. 6296 (T. D. 27155). The merchandise in that case was crash, the weft yarn being cotton alone, the warp yarn being flax and jute combined. In passing upon the issue of component material of chief value in that case, the board, by De Vries, G. A., said:

> We find as facts herein that the merchandise consists of a cotton yarn and a so-called flax yarn made of flax and jute. We further so find that as compared one with the other cotton predominates in value.
>
> We are of the opinion that the claim of the protestants is well taken.
>
> The so-called flax yarn that was introduced in the manufacture of the goods is not a *single* component material as required by the statute, but is itself a manufacture of *two* single component materials, to wit, flax and jute. Section 7 of the tariff act of 1897 provides that in the ascertainment of the component material of chief value in a fabric it shall be according to "that component material which will exceed in value any *other single component* of the article." It seems to us clear and beyond controversy that the *single* component material going to make up the flax yarn in the first instance are flax and jute, and the fabric in the second are cotton, flax, and jute.
>
> The same question was before the board for decision in protest 36214f, March 2, 1899, unpublished decision (vol. 327, p. 64), in which the board reached the identical conclusion arrived at in this case. That case was appealed to the United States Circuit Court for the Southern District of New York, and on such appeal affirmed. See United States *v.* Churchill (106 Fed., 672).
>
> The same reasoning was adopted by the board in G. A. 6112 (T. D. 26609). We think this case so clearly beyond controversy that further comment is unnecessary upon this point.

We think that the foregoing decision and the authorities therein cited furnish the correct rule of decision in the present case.

We are referred by the Government to a number of decisions which relate to the statutory provisions in question, among them being

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Seeberger *v.* Hardy (150 U. S., 420); United States *v.* Hoeninghaus (137 Fed., 478); United States *v.* Johnson (154 Fed., 39); United States *v.* Meadows (2 Ct. Cust. Appls., 143; T. D. 31665); Bing *v.* United States (3 Ct. Cust. Appls., 211; T. D. 32532); United States *v.* Gredelue (5 Ct. Cust. Appls., 298; T. D. 34476). An examination of the foregoing cases, however, will disclose the fact that in each case the component material of chief value in the article in question was ascertained by means of a comparison in values between the single or separate constituent materials thereof, and that in no case did the court in making such a comparison accredit to any material the value of other materials which were physically combined with it in the manufacture of the article. The cited authorities therefore do not directly touch upon the question which is decisive of the present case.

The decision of the board overruling the protest is therefore *reversed.*

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(T. D. 36877.)

*Drawback on peanut meal.*

Drawback allowed on peanut meal manufactured or produced by the Terminal Oil Mill Co., of New Orleans, La., for the account of the Southport Mill (Ltd.), of New Orleans, with the use of imported shelled peanuts.

TREASURY DEPARTMENT, *December 11, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of 1913 and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on peanut meal manufactured by the Terminal Oil Mill Co., of New Orleans, La., for the account of the Southport Mill (Ltd.), of New Orleans, La., from imported shelled peanuts.

A manufacturing record shall be kept in accordance with the sworn statement of the manufacturers, dated November 10, 1916, which shall show, in addition to the usual import data, the quantity of shelled peanuts used and the quantities of peanut meal and oil produced and the value of each of said products. A sworn abstract from the manufacturing record shall be filed with the drawback entry.

The quantity of imported peanuts which may be taken as a basis for the allowance of drawback shall not exceed the quantity used, as shown by the abstract from the manufacturing record, the drawback accruing to be distributed between the principal product (peanut oil) and the by-product (peanut meal) according to their relative values, provided that the drawback distributed to the peanut meal shall not exceed that authorized by the drawback law as interpreted by the department in T. D. 33809 of October 25, 1913.

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Drawback may be allowed under these regulations on peanut meal exported on and after October 23, 1915.

Respectfully, ANDREW J. PETERS,
(105585.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New Orleans, La.*

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(T. D. 36878.)

*Drawback on castor oil.*

**T. D. 35776 of October 13, 1915, amended to provide for a manufacturing period of a maximum duration of six months.**

TREASURY DEPARTMENT, *December 12, 1916.*

SIR: The department's regulations of October 13, 1915 (T. D. 35776), providing for drawback on castor oil manufactured by Spencer Kellogg & Sons (Inc.) of Buffalo, N. Y., with the use of imported castor seed, are hereby amended to provide for a manufacturing period of a maximum duration of six months.

Respectfully, ANDREW J. PETERS,
(102975–2.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36879.)

*Drawback on fusel oil.*

**T. D. 36682 of September 25, 1916, extended to provide for drawback on fusel oil, a by-product resulting from the manufacture of alcohol, by the Everett Distilling Co., of Everett, Mass., from imported sacaharine materials.**

TREASURY DEPARTMENT, *December 12, 1916.*

SIR: The department's regulations of September 25, 1916 (T. D. 36682), are hereby extended to cover fusel oil, a by-product resulting from the manufacture of alcohol, by the Everett Distilling Co., of Everett, Mass.

The manufacturing record shall show, in addition to the data already provided for, the value of the alcohol produced and the quantity and value of the fusel oil produced.

In liquidation, the quantity of imported material which may be taken as a basis for the allowance of drawback shall not exceed the quantity used, as shown by the abstract from the manufacturing record, the drawback accruing to be distributed between the principal product (alcohol) and the by-product (fusel oil) according to their

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relative values, provided that the drawback distributed to the fusel oil shall not exceed the maximum allowance authorized by the drawback law as interpreted by the department in T. D. 33809 of October 25, 1913.

Respectfully, ANDREW J. PETERS,
(97904.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

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(T. D. 36880.)

*Drawback on chewing gum.*

**Drawback allowed on chewing gum designated as "Hershey's mint flavor chewing gum," manufactured by the Hershey Chocolate Co., of Hershey, Pa., with the use of refined sugar and crude gum chicle.**

TREASURY DEPARTMENT, *December 12, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on chewing gum designated as "Hershey's mint flavor chewing gum," manufactured by the Hershey Chocolate Co., of Hershey, Pa., with the use of imported crude gum chicle and imported raw or refined sugar or refined sugar produced with the use of imported raw sugar.

A manufacturing record shall be kept in accordance with the sworn statement of the manufacturers, dated November 15, 1916, which is transmitted herewith for filing in your office, which will show, in addition to the usual import data, in the case of each lot of chewing gum manufactured for exportation with benefit of drawback, the lot number, date of manufacture thereof, quantity, character, and identity of the refined sugar, the quantity and identity of the gum chicle used, and the quantity of chewing gum produced. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The quantities of sugar and imported crude gum chicle which may be taken as a basis for the allowance of drawback shall not exceed the quantities used in the manufacture of the exported chewing gum, as shown by the abstract from the manufacturing record.

Drawback may be allowed under these regulations on chewing gum exported on and after July 20, 1916.

Respectfully, ANDREW J. PETERS,
(80279.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36881.)

*Prohibiting solicitation by employees of the Treasury Department.*

[Circular No. 70.]

TREASURY DEPARTMENT, *December 16, 1916.*

*To officers and employees of the Treasury Department:*

No person or persons in the service of any branch of the Treasury Department shall solicit or receive, or be in any way concerned in soliciting or receiving, individually, collectively, through the medium of an association or of solicitors or publishers contracted with or employed, or in any other manner, money or any other valuable thing, from any person, firms, association, or corporation transacting business with the Treasury Department or any of its field services, for advertising in any program, souvenir, or other publication, or for any other purpose, directly or indirectly connected with any employee or employees, under penalty of summary removal of any employee who makes or is in any way responsible for the making of solicitations for any such purpose or is in any way connected with the receipt of any contribution from such a source.

W. G. MCADOO, *Secretary of the Treasury.*

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(T. D. 36882.)

*Record of absentees.*

Article 1167 of the Customs Regulations of 1915 amended.

TREASURY DEPARTMENT, *December 18, 1916.*

*To collectors and other officers of the customs:*

Article 1167 of the Customs Regulations of 1915 is hereby amended to read as follows:

ART. 1167.—*Record of absence.*—An employee will be designated in each office or division to act as time clerk. The said clerk will report each day to the head of the office or division on the "Daily list of absentees" (Customs Form 3025) all officers and employees absent on account of leave or sickness for the whole or any part of the day. After the said list has been approved by the head of the office or division the time so charged will be recorded by the time clerk on the individual card record of absence (Departmental Stock Form 2152), which card constitutes a permanent official record of absence on account of leave and sickness. One card a year will be used for each employee.

Applications for leave of absence for less than one day will be made to the head of the office or division on Customs Form 3019, and for one day or more on Departmental Stock Form 2217.

When partial-day absences aggregate a day, a day's absence will be charged against annual leave.

ANDREW J. PETERS, *Assistant Secretary.*

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(T. D. 36883—G. A. 8003.)

*Quilts of down.*

Quilts of down composed in chief value of silk, the down being the predominant material, are properly dutiable under the *eo nomine* provision for "quilts of down" in paragraph 347, tariff act of 1913.—Hempstead *v.* United States (168 Fed., 450; T. D. 29634) and Woodruff *v.* United States (168 *Id.*, 452; T. D. 29645) cited and followed.

United States General Appraisers, New York, December 11, 1916.

In the matter of protest 801843 of B. Altman & Co. against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

*Churchill, Marlow & Hines* for the importers.

*Bert Hanson*, Assistant Attorney General (*Charles O. Baese*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers).

HOWELL, *General Appraiser:* This protest, which is directed against the assessment of duty on curtains and quilts, was submitted on the appraiser's report, which reads as follows:

The merchandise consists of cotton or flax handmade lace curtains, some of which are also embroidered by hand. It was returned for duty at 60 per cent ad valorem under paragraph 358, act of 1913, and down-filled silk quilts, silk the component material of chief value, returned as a manufacture in chief value of silk at 45 per cent ad valorem, paragraph 318, act of 1913.

No other evidence was offered, and there is nothing in the record to support any of the claims made in the protest with respect to the curtains. Those claims are therefore overruled.

In their brief, counsel for the importers confine themselves to a consideration of the claim that the quilts, which were assessed for duty as manufactures of silk under paragraph 318, tariff act of 1913, are properly dutiable at 40 per cent ad valorem under paragraph 347, which, so far as pertinent, reads as follows:

347. Feathers and downs, * * * when dressed, colored, or otherwise advanced or manufactured in any manner, and not suitable for use as millinery ornaments, including quilts of down and manufactures of down, 40 per centum ad valorem.

The goods in question are admittedly "quilts of down," but inasmuch as they are composed in chief value of silk, the Government contends that they are to be excluded from paragraph 347, on the theory that the *eo nomine* provision therein for quilts of down is limited to such quilts as are composed wholly or in chief value of down. Reliance is placed on the general rule that when a statute imposes duty on an article as "made of," "composed of" or "manufactured of" a specified material without declaring to what extent it must be made of that material, it is at least confined to merchandise of which the specified material is the component material of chief value. There is, however, an exception to that rule, which recognizes that sometimes the classification of an article may be governed by its predominant material rather than by its component material

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of chief value. Hempstead *v.* United States (168 Fed., 450; T. D. 29634) and Woodruff *v.* United States (168 *Id.*, 452; T. D. 29645).

In the Hempstead and Woodruff cases the merchandise consisted of house furniture, and it was held dutiable under the *eo nomine* provision for "house or cabinet furniture of wood," although in each case the furniture was composed in chief value of some material other than wood. In the Hempstead case the furniture was what is commonly known as "Buhl furniture," of which brass was the component material of chief value; while in the Woodruff case the furniture was upholstered with Aubusson tapestry, of which silk was the component material of chief value, and silk was also the component material of chief value in the completed furniture. The wood, of course, was the predominant material, giving to the furniture its form and shape, and it was its indispensable material so far as use was concerned. The court said that in common speech such furniture was included in the class of furniture of wood, and held it so dutiable.

In the case at bar, the Assistant Attorney General argues that it is the silk covering which predominates and gives the quilt its characteristic appearance, the down being hidden from view. Of course the down in a quilt is always hidden from view, but it is nevertheless the predominant and indispensable material determining the name and character of the quilt, and we think that in common speech the *eo nomine* statutory description "quilts of down" includes these articles, irrespective of their component material of chief value.

The protest is accordingly sustained to this extent.

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(T. D. 36884—G. A. 8004.)

*Mounted lithographs.*

Mounted lithographs, as intended to be covered by the proviso to paragraph 325 of the act of 1913, include only such where the print, as a result of the permanent method employed in mounting it, has virtually become a part of the foundation on which it is mounted, and consequently incapable of being separately measured as to its thickness without either mutilating or destroying it or otherwise rendering it commercially valueless. Calendar sheets attached to the foundation by means of wire staples, and obviously intended to be removed a sheet at a time without disturbing the remaining sheets, are not mounted in the statutory sense.

United States General Appraisers, New York, December 18, 1916.

In the matter of protest 799925 of W. White against the assessment of duty by the collector of customs at the port of Detroit.

[Affirmed.]

*Edward D. Jones* for the importer.

*Bert Hanson*, Assistant Attorney General (*Thomas J. Doherty* and *Charles O. Baese*, special attorneys), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; COOPER, G. A., not participating).

FISCHER, *General Appraiser:* The merchandise consists of calendars composed of 12 sheets of comparatively thin paper superim-

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posed upon and fastened by three wire staples to a foundation back of heavier paper of considerably greater area. The printing throughout is by the lithographic process and in various colors; the 12 sheets, each bearing numerals showing the days and dates of some one of the different months in the year, are so fastened that a single sheet may be readily removed at the expiration of a month, leaving the rest of the calendar sheets intact for further use. In fact, excepting possibly the pictorial design covering the foundation background, these calendars may be said to resemble in a general way any one of the numerous large, attractively printed calendars found hanging from the walls of the average office throughout the country—calendars which are ordinarily distributed gratuitously as advertising mediums.

Duty was levied upon the articles at the rate of 15 cents per pound under the following pertinent provisions of paragraph 325 of the act of 1913:

325. Pictures, calendars, * * * and other articles composed wholly or in chief value of paper lithographically printed in whole or in part from stone, gelatin, metal, or other material (except boxes, views of American scenery or objects, and music, and illustrations when forming a part of a periodical or newspaper or of bound or unbound books, accompanying the same, not specially provided for in this section) shall pay duty at the following rates: * * * booklets, 7 cents per pound; all other articles not exceeding eight one-thousandths of an inch in thickness, 15 cents per pound; * * * exceeding eight and not exceeding twenty one-thousandths of an inch in thickness and thirty-five square inches and over cutting size in dimension, 7 cents per pound; * * * providing that in the case of articles hereinbefore specified the thickness which shall determine the rate of duty to be imposed shall be that of the thinnest lithographed material found in the article, but for the purpose of this paragraph the thickness of lithographs mounted or pasted upon paper, cardboard, or other material shall be the combined thickness of the lithograph and the foundation upon which it is mounted or pasted * * *.

The claim alleged in the protest is that said calendars are properly dutiable at the rate of 7 cents per pound under the provisions for lithographed paper calendars "exceeding eight and not exceeding twenty one-thousandths of an inch in thickness and thirty-five square inches and over cutting size in dimension."

In classifying the articles as he did, it is perfectly clear that the collector did not consider the lithographed calendar sheets attached to the back as having been mounted or pasted within the statutory meaning, since he determined the dutiable rate applicable thereto by the first method prescribed in the proviso to said paragraph, to wit, that "the thickness which shall determine the rate of duty to be imposed shall be that of the thinnest lithographed material found in the article."

The importer, on the other hand, contends that the calendar sheets are mounted within the meaning of the paragraph, and that consequently the second method prescribed in said proviso should determine the rate of duty properly applicable to the goods, which method

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is that "the thickness of lithographs mounted or pasted upon paper, cardboard, or other material shall be the combined thickness of the lithograph and the foundation upon which it is mounted or pasted."

Primarily, then, we have this legal question to determine: Are these calendar sheets "mounted," as contemplated by the paragraph, since it is plainly obvious they are not pasted? As defined by the dictionaries, the word "mount" means—

Century Dictionary:

To put in shape for examination or exhibition by means of necessary or ornamental supports or accessories; furnish, fit up, or set with necessary appurtenances; as, to *mount* a picture or a map.

The paper, cardboard, or other material to which an engraving or drawing is attached to set it off to advantage. A mount may be a single sheet, or two sheets, to one of which the print is attached, while the other, with a space cut out somewhat larger than the print, is placed over it, permitting it to be seen, while protecting it from abrasion.

Standard Dictionary:

To prepare for use, exhibition, ornament, preservation, or examination; as, to *mount* a drawing or a map.

Oxford Dictionary:

The margin surrounding a picture, or the cardboard upon which a drawing is mounted.

To set or place in or upon a mount or support; spec. to fit a picture on or in a mount.

Webster's Dictionary:

The cardboard or cloth on which a drawing, photograph, or the like is mounted; a mounting.

It will be observed that these definitions are somewhat broad and general in scope; nevertheless, in so far at least as they refer to prints, drawings, photographs, engravings, maps, etc., as mounted upon paper, cardboard, and like material, it is entirely reasonable to assume that the method by which the mounting is done is pasting, or some equally permanent process. At any rate, that is a perfectly natural interpretation to give to the words of the statute, especially as the term "mounted" is therein immediately coupled with the alternative words "or pasted."

While we do not mean to be understood as holding that pasting is the only method by which a print may be mounted on paper, cardboard, etc., in the statutory sense, nevertheless we believe that the use of the words "or pasted" is strongly indicative of the congressional intention that the print and the foundation upon which it is mounted should, for tariff purposes at least, be treated as one and the same thing—as an article the components of which are so inseparably united as to render it a physical impossibility to measure the thickness of the print without either mutilating or destroying it, or otherwise leaving it commercially valueless, which must inevitably

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be the result of an attempt to separately measure the thickness of a print after it has been securely pasted to the foundation back. In other words, Congress evidently had in mind that class of lithographed articles where the print, by reason of the permanent character of the method employed in mounting it, has virtually lost its tariff identity as such, and has become rather an integral part of another and separate dutiable entity, to wit, a mounted lithograph, and as such specially provided for *eo nomine* under the proviso to paragraph 325.

If such be the fair interpretation of the legislative conception of what constitutes a mounted lithograph—and the plain language of the paragraph certainly admits of no other view—then these calendar sheets are clearly not mounted within the purview of the law. The method of attachment is such that a single sheet may readily be removed without disturbing the remaining sheets or in any way affecting the general object or usefulness for which the article was specially manufactured and designed. In fact, that the sheets may be so removed is the reason for the temporary character of the attachment by means of wire staples; and inasmuch as the manner of holding the sheets in place is so obviously intended to serve only a temporary need, that circumstance of itself precludes the statement that the sheets are mounted either within the tariff significance of the term, or within the common and ordinary understanding thereof.

Furthermore, in contending for the application to his merchandise of both the measurement tests prescribed in the proviso in question, this importer is confronted with practical difficulties. As above pointed out, the dutiable rate in one instance depends upon the thickness of the thinnest lithographed material in the article, while in the other instance it is governed by the combined thickness of mounted lithographs. Two distinct classes of articles are therefore contemplated, and the appropriate measurement prescribed for each class is made exclusive of the other, the very statutory language employed precluding the application of both tests to the same kind of lithographs.

Again, if it is entirely practicable—and the sample in evidence shows that it is so—to measure the thinnest lithographed material in these calendars without in anywise affecting or imparing the commercial value or utility of the article; and if, as above stated, the provision for mounted lithographs includes only such where the prints are so inseparably attached to the foundations that the two parts virtually have become merged into a single dutiable entity, how, then, may we ask, is it possible to apply both prescribed tests to these calendars?

Even conceding, for the sake of argument, that the sheets have been mounted, why does the importer invoke the test calling for the thickness of the thinnest lithographed material when there is a

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special statutory test prescribed for mounted lithographs? And if the "combined thickness" measurement ought to prevail, why select only one of the calendar sheets for measurement when there are 12 of them, all alike as to printing and all similarly attached?

Moreover, if to "mount" a print on heavy paper or cardboard ordinarily means to set it off in such manner as to enhance or display to greater advantage any artistic or ornamental feature it may possess, then in the present calendars only one of the sheets, the top or exposed sheet, may be said to be mounted. How about the 11 unexposed sheets? Are they mounted?

The provision for lithographic prints in paragraph 400 of the act of 1897 prescribed no special measurement tests for determining the applicable rate of duty on articles therein enumerated as dutiable according to size or dimensions. Hence, in the case of Fuld *v.* United States (138 Fed., 973; T. D. 26196), the United States Circuit Court for the Southern District of New York held such prints to be classifiable for duty in accordance with the thickness of the principal or substantial part. Congress, however, met this ruling by prescribing in the two subsequent tariff acts (those of 1909 and 1913, respectively) precisely the measurements which should determine the rate of duty and how such measurements should be ascertained. These changes in the law therefore render wholly inapplicable to the classification of the present merchandise the rule laid down in the decision of the court in the Fuld case, *supra*.

A decision here directly in point, however, is that rendered by this board in G. A. 7382 (T. D. 32733), and subsequently affirmed by the United States Court of Customs Appeals in Hensel *v.* United States (4 Ct. Cust. Appls., 94; T. D. 33370). That case arose under the proviso to paragraph 412 of the act of 1909, of which the present proviso to paragraph 325 is a literal reenactment. The prints there in question were in the form of folding scenes. Construing the proviso the board said:

> This proviso as we read it covers two classes of articles, the one where lithographed material is combined to make up articles similar to those before us, and the other where lithographic prints are mounted, pasted, or superimposed on heavier material in order to give the mounted print the stiffness necessary and incidental to its use, and in which latter class such mounted lithographs as placards, advertising cards, and show cards may be mentioned. As we view the issue it was never intended to include by the description "mounted or pasted" articles which, like these, have merely had added to them narrow strips or hinges to make up folding pictures.

The ascertained thickness of the thinnest lithographed material in these calendars being under eight one-thousandths of an inch, we affirm the decision of the collector classifying the articles as dutiable at the rate of 15 cents per pound under paragraph 325. The protest is therefore in all respects overruled.



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*Abstracts of decisions of the Board of General Appraisers.*

*Board 1*—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

BEFORE BOARD 1, DECEMBER 11, 1916.

**No. 40460.**—Protests 764596-54828, etc., of Bernard, Judae & Co. (Chicago).

BEADED NECKLACES.—Necklaces and chains in chief value of beads composed of colored glass or wood permanently strung, classified as beaded articles at 50 per cent ad valorem under paragraph 333, tariff act of 1913, are claimed dutiable according to the component material of chief value in the beads under paragraph 176, 95, 84, or 25.

Opinion by SULLIVAN, G. A. On the authority of United States *v.* Morimura (7 Ct. Cust. Appls., —; T. D. 36801) the necklaces in question were held properly classified as beaded articles under paragraph 333. American Bead Co. *v.* United States (7 Ct. Cust. Appls., —; T. D. 36259) cited.

**No. 40461.**—Protest 783195-57066 of Sears, Roebuck & Co. (Chicago).

MIRROR PUZZLES.—Small circular articles containing a ball puzzle on one side and a mirror on the other, classified as toys at 35 per cent under paragraph 342, tariff act of 1913, are claimed dutiable as mirrors at 30 per cent under paragraph 95.

Opinion by SULLIVAN, G. A. Sufficient evidence not having been produced to warrant a reversal of the collector's action the classification of the merchandise as toys under paragraph 342 was affirmed. United States *v.* Sears (6 Ct. Cust. Appls., 376; T. D. 35919) followed.

**No. 40462.**—Protest 805711 of American Express Co. (New York).

TIMERS—STOP WATCHES.—The appraiser reports that the articles in question are known as stop watches. They were classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, and are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. On the authority of G. A. 7730 (T. D. 35460) and G. A. 7827 (T. D. 35971) the timers in question were held dutiable under paragraph 167.

**No. 40463.**—Protest 805660 of G. Gennert (New York).

ENLARGING MIRRORS—OPTICAL INSTRUMENTS.—The appraiser reports that the merchandise consists of a so-called "enlarging camera." It was classified as an optical instrument at 35 per cent ad valorem under paragraph 93, tariff act of 1913, and is claimed dutiable as a photographic camera at 15 per cent under paragraph 380.

Opinion by SULLIVAN, G. A. The enlarging camera in question was held dutiable as a photographic camera under paragraph 380, as claimed. Abstract 40316 followed.

**No. 40464.**—Protest 792439 of American Express Co. (Boston).

ROSARIES.—Rosaries in chief value of metal, classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable under paragraphs 84, 176, 385, and 368.

Opinion by SULLIVAN, G. A. On the authority of United States *v.* American Bead Co. (7 Ct. Cust. Appls., —; T. D. 36456) the rosaries in question being in chief value of metal, were held dutiable under paragraph 167. Protest overruled, no claim under that paragraph having been made.

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BEFORE BOARD 2, DECEMBER 11, 1916.

**No. 40465.**—Protests 788378, etc., of G. Klein & Son et al. (New York).

ROSARIES.—Rosaries composed in chief value of metal, classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable under paragraph 167.

Opinion by FISCHER, G. A. The rosaries found to be in chief value of silver-plated metal were held dutiable at 50 per cent, and those in chief value of metal, not plated, were held dutiable at 20 per cent, under the provisions of paragraph 167. United States *v.* American Bead Co. (7 Ct. Cust. Appls., —; T. D. 36456) followed.

**No. 40466.**—Protest 806032 of A. Wittnauer Co. (New York).

TIMERS—STOP WATCHES.—Timers known as stop watches, classified as watches at 30 per cent ad valorem under paragraph 161, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by FISCHER, G. A. On the authority of G. A. 7827 (T. D. 35971) the sto watches were held dutiable under paragraph 167, as claimed.

**No. 40467.**—Protests 807034, etc., of M. J. Corbett & Co. (New York).

PAPER-PUNCHING MACHINES.—The appraiser reports that the merchandise consists of a 13-needle embroidery machine with an attachment which punches or cuts out designs on paper at the same time as the embroidery work is performed. It was classified as an embroidering machine at 25 per cent ad valorem under paragraph 165, tariff act of 1913, and is claimed dutiable as a manufacture of metal at 20 per cent under paragraph 167.

Opinion by FISCHER, G. A. This paper-punching machine was held dutiable under paragraph 167. G. A. 7951 (T. D. 36612) followed.

**No. 40468.**—Protest 787620 of Hensel, Bruckmann & Lorbacher (New York).

WHITE BLOCKING PAPER.—Merchandise invoiced as white blocking paper, classified as coated paper not specially provided for, at 35 per cent ad valorem under paragraph 324, tariff act of 1913, is claimed dutiable as coated paper, calender-plate finished, at 25 per cent under the same paragraph.

Opinion by FISCHER, G. A. Upon stipulation of counsel the white blocking paper was held dutiable at 25 per cent under paragraph 324. Abstract 40075 followed.

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BEFORE BOARD 1, DECEMBER 13, 1916.

**No. 40469.**—Protests 767584–54547, etc., of Marshall Field & Co. et al. (Chicago).

BEADED NECKLACES.—Necklaces and chains in chief value of beads composed of amber, colored glass, or wood, classified as beaded articles at 50 per cent ad valorem under paragraph 333, tariff act of 1913, are claimed dutiable under paragraphs 367, 176, 95, 25, 368, and 385.

Opinion by SULLIVAN, G. A. On the authority of United States *v.* Morimura (7 Ct. Cust. Appls., —; T. D. 36801), American Bead Co. *v.* United States (7 Ct. Cust. Appls., —; T. D. 36259), and Abstract 40460, the necklaces in question were held properly classified under paragraph 333.

**No. 40470.**—Protest 518101 of Henry Heil Chemical Co. (St. Louis).

THERMOMETERS.—Thermometers classified as blown glassware at 60 per cent ad valorem under paragraph 98, tariff act of 1909, are claimed dutiable at 35 per cent under paragraph 420, or at 45 per cent under paragraph 199.

Opinion by SULLIVAN, G. A. Protest unsupported; overruled.

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**No. 40471.**—Protest 803629 of Scruggs, Vandervoort-Barney Dry Goods Co. (St. Louis).

PERFUME JARS.—Merchandise invoiced as perfume jars and classified as articles of perfumery at 60 per cent ad valorem under paragraph 48, tariff act of 1913, is claimed dutiable as plain red earthenware at 35 per cent under paragraph 79, or as common brown earthenware at 15 per cent under paragraph 78.

Opinion by MCCLELLAND, G. A. The sample consists of a buff-colored earthenware vase about 4 inches high and 3½ inches in diameter, having a small opening at the top and a handle on each side. No proof was offered in support of the claims made. Protest overruled.

**No. 40472.**—Protests 751515, etc., of Wm. A. Brown & Co. (New York).

FISH IN LARD.—Fish in lard, classified as fish in oil at 25 per cent ad valorem under paragraph 216, tariff act of 1913, is claimed dutiable under the provisions in the same paragraph for all other fish in tin packages at only 15 per cent.

Opinion by BROWN, G. A. It was found that the fish in question is dutiable at 15 per cent under paragraph 216, as claimed. Abstract 38862 followed.

**No. 40473.**—Protests 767186, etc., of Dieckerhoff, Raffloer & Co., and protests 778790, etc., of Recher & Co. et al. (New York).

MOHAIR DRESS GOODS.—Mohair dress goods and linings classified as cloth in chief value of the hair of the Angora goat at 40 per cent ad valorem under paragraph 308, tariff act of 1913, are claimed dutiable as cloth in chief value of wool at 35 per cent under paragraph 288 or as wool dress goods or coat linings under paragraph 290.

Opinions by BROWN, G. A. On the authority of Rosenberg *v.* United States (7 Ct. Cust. Appls., —; T. D. 36510) the merchandise in question was held properly classified under paragraph 308.

**No. 40474.**—Protest 804723 of California Furniture Co. (Los Angeles).

RUGS.—The question here is whether the merchandise is dutiable as Oriental, Berlin, Aubusson, Axminister, and similar rugs at 50 per cent ad valorem under paragraph 300, tariff act of 1913, or as Wilton carpets or carpeting at 30 per cent under paragraph 294.

Opinion by BROWN, G. A. The rugs in question were held dutiable under paragraph 294, as claimed.

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BEFORE BOARD 2, DECEMBER 13, 1916.

**No. 40475.**—Protest 739330 of Malhami & Co. (New York).

CRUCIFIXES—ROSARIES.—Crucifixes, crosses, rosaries, and religious articles, classified under paragraphs 167 and 333, tariff act of 1913, are claimed dutiable according to the component material of chief value.

Opinion by FISCHER, G. A. On the authority of Abstract 38674 the crucifixes composed of nickel, silver plated, were held properly classified at 50 per cent under paragraph 167. The nickel crosses not plated were held dutiable at 20 per cent under the same paragraph. Rosaries in chief value of wood, coco, and bone beads were held dutiable at 50 per cent under paragraph 333. Rosaries composed of wood beads and steel link chains, silver plated, and other articles of metal, gold plated, were held dutiable as plated metal articles at 50 per cent under paragraph 167. Protest overruled. United States *v.* American Bead Co. (7 Ct. Cust. Appls., —; T. D. 36456) followed.

**No. 40476.**—Protest 780374 of R. H. Macy & Co. (New York).

TURKISH TOWELS—COUCH COVERS.—Cotton Turkish towels and cotton velvet couch covers, etc., classified at 40 per cent ad valorem under paragraph 257, tariff act of 1913, are claimed dutiable at 35 per cent under paragraph 258, or at 25 per cent under paragraph 264.

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Opinion by COOPER, G. A. Turkish towels were held dutiable at 25 per cent under paragraph 264. G. A. 7656 (T. D. 35019) followed. The couch covers were held dutiable at 35 per cent under paragraph 258. Downing *v.* United States (6 Ct. Cust. Appls., 447; T. D. 35984) followed.

**No. 40477.**—Protest 779674 of Valentine Hat Co. (St. Louis).

HAT LININGS.—Straw hat linings made of cotton netting, paper, and satin, classified as linings in part of cotton net at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable at 30 per cent under paragraph 256 or at 25 per cent under paragraph 332.

Opinion by COOPER, G. A. No proof having been offered as to the component material of chief value the protest was overruled. G. A. 6458 (T. D. 27660) cited.

**No. 40478.**—Protests 783450, etc., of Snow's United States Sample Express Co. (New York).

WEARING APPAREL IN PART OF BRAIDS.—These protests are against the classification of articles of wearing apparel in part of braids, ornaments, or trimmings at 60 per cent ad valorem under paragraph 358, tariff act of 1913.

Opinion by HOWELL, G. A. On the authority of United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388) certain items were held dutiable as silk wearing apparel at 50 per cent under paragraph 317 and others as wool wearing apparel at 35 per cent under paragraph 291. Wearing apparel composed of plushes made from mohair was held dutiable at 45 per cent under paragraph 309. Abstract 38951 followed. Protests sustained in part.

**No. 40479.**—Protests 791319-57915, etc., of Marshall Field & Co. (Chicago).

WEARING APPAREL, BEADED.—Articles of wearing apparel classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as silk wearing apparel at 50 per cent under paragraph 317.

Opinion by HOWELL, G. A. On the authority of Loewenthal *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464) the merchandise in question was held dutiable as silk wearing apparel under paragraph 317, as claimed.

**No. 40480.**—Protest 802319 of S. Teranishi (San Francisco).

LAMP SHADES.—Lamp shades classified as in part of trimmings at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as manufactures of silk at 45 per cent under paragraph 318 or as bamboo articles at 25 per cent under paragraph 175.

Opinion by HOWELL, G. A. The lamp shades in question were made of bamboo lined with silk, trimmed or ornamented with a heavy trimming similar to fringe made from artificial silk. It was found that the shades are in chief value of artificial silk. Protest overruled.

**No. 40481.**—Protest 803980 of Wm. H. Stiner & Son (New York).

WOOL DRESS GOODS.—Merchandise classified as woven fabrics in chief value of silk at 45 per cent ad valorem under paragraph 318, tariff act of 1913, is claimed to be in chief value of cotton dutiable at a lower rate under various paragraphs.

Opinion by HOWELL, G. A. Upon the report of the analyst it was found that wool is the component material of chief value and the goods were held dutiable at 35 per cent under paragraph 290. Protest overruled, that claim not having been made. United States *v.* Park (3 Ct. Cust. Appls., 350; T. D. 32907) cited.

**No. 40482.**—Protest 804285-59487 of Bernard, Judae & Co. (Chicago).

METAL-THREAD LACES AND NETTINGS.—This protest relates to laces and nettings classified as in chief value of metal threads at 60 per cent ad valorem under paragraph 358, tariff act of 1913.

Opinion by HOWELL, G. A. Protest unsupported; overruled. Siegman *v.* United States (7 Ct. Cust. Appls., —; T. D. 36506) noted.

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(T. D. 36885.)

*Drawback on fuses.*

T. D. 36415 of May 20, 1916, authorizing the allowance of drawback on fuses manufactured in part by the General Electric Co., of Pittsfield, Mass., with the use of castings manufactured by the Aluminum Castings Co., of Fairfield, Conn., extended to cover the manufacture of fuses at the Lynn, Mass., factory of the General Electric Co.

TREASURY DEPARTMENT, *December 19, 1916.*

SIR: The department's regulations of May 20, 1916 (T. D. 36415), providing for the payment of drawback on fuses manufactured in part by the General Electric Co., of Pittsfield, Mass., and in part by the Artillery Fuse Co., of Wilmington, Del., with the use of castings manufactured by the Aluminum Castings Co., of Fairfield, Conn., with the use of imported aluminum or aluminum alloys, are hereby extended to cover fuses manufactured from aluminum parts produced at the Lynn, Mass., factory of the General Electric Co.

The sworn statement of the manufacturers, dated November 6, 1916, is transmitted herewith for filing in your office.

Drawback may be allowed on fuses exported under these regulations on and after July 28, 1916.

Respectfully, ANDREW J. PETERS,
(103766-8.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36886.)

*Drawback on confectionery.*

Drawback on confectionery manufactured by the Certified Products Co., of New York, N. Y., with the use of refined sugar produced in whole or in part from imported raw sugar.

TREASURY DEPARTMENT, *December 20, 1916.*

SIR: Drawback is herewith allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on confectionery designated as "Smiles," manufactured by the Certified Products Co., of New York, N. Y., with the use of refined sugar produced in whole or in part from imported raw sugar.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturers, dated December 9, 1916, transmitted herewith, and a sworn abstract from such record shall be filed with the drawback entry.

The quantity of refined sugar which may be taken as a basis for an allowance of drawback shall not exceed the quantity appearing in

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the exported product, as indicated in the sworn abstract from the manufacturing record, with a maximum of the quantity shown in the sworn statement of the manufacturers above referred to.

Drawback may be allowed under these regulations on the articles covered thereby exported on or after October 7, 1916.

Respectfully, ANDREW J. PETERS,
(102700–11.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36887.)

*Invoices of tobacco.*

T. D. 36476 of June 12, 1916, prescribing the method of invoicing tobacco, superseded.

TREASURY DEPARTMENT, *December 21, 1916.*

*To collectors of customs and others concerned:*

Pursuant to the provisions of paragraph 182 and paragraph D of section 3 of the tariff act of October 3, 1913, invoices of imported tobacco must specify in detail the character of the tobacco contained in each bale, its origin as to country and province, the year of its production, and the grade or grades contained in each bale, specifying the number of carrots of each grade, when more than one grade is packaged in a bale, the time when and the place where and from whom purchased, and the price paid or to be paid for each bale or package, if purchased by the bale or package, or for the vega or lot if purchased in bulk, and if obtained otherwise than by purchase the actual market value per bale.

Invoices covering or including bales of tobacco which are part of a vega or lot purchased in bulk must contain or be accompanied by a full description of the vega or lot purchased, or, if such description has been furnished with a previous importation, specify the date and number of the consular invoice in which the same has been incorporated.

Packages or bales when containing filler leaf only shall be invoiced as filler; when containing both filler and wrapper, but not more than 15 per cent of wrapper, shall be invoiced as mixed; and when containing more than 15 per cent of wrapper, shall be invoiced as wrapper. Collectors will not permit entry of tobacco unless the invoice conforms to the above requirements.

If any bale is found to contain 10 per cent more wrapper than that specified in the invoice or is found to disagree materially with the invoice specifications as to origin or grade and there is reasonable cause to suspect fraud, the collector will withhold delivery of the particular package so disagreeing and report the facts to the special

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agent in charge for investigation. If the investigation discloses fraudulent invoicing, the tobacco should be seized and the facts reported by the collector to the United States attorney for prosecution.

T. D. 36476 of June 12, 1916, superseded.

(43579.) ANDREW J. PETERS, *Assistant Secretary.*

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(T. D. 36888.)

*Drawback on morphine and codeine.*

T. D. 35888 of November 16, 1915, extended to provide for the use of opium-morphine alkaloid.

TREASURY DEPARTMENT, *December 21, 1916.*

SIR: The department's regulations of November 16, 1915 (T. D. 35888), providing for the payment of drawback on morphine, codeine, alkaloids, and salts manufactured by the Powers-Weightman-Rosengarten Co., of Philadelphia, Pa., with the use of opium, etc., are hereby extended to provide for the use of pure morphine alkaloid, the product of a preceding period of manufacture, returned to process for the purpose of converting the same into salts.

Respectfully, ANDREW J. PETERS,

(102387.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

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(T. D. 36889.)

*Drawback on condensed milk.*

Drawback on condensed milk manufactured by Libby, McNeill & Libby, of Chicago, Ill., with the use of refined sugar produced in whole or in part from imported raw sugar.—T. D. 34847 of October 30, 1914, revoked.

TREASURY DEPARTMENT, *December 21, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on condensed milk manufactured by Libby, McNeill & Libby, of Chicago, Ill., with the use of refined sugar produced in whole or in part from imported raw sugar.

At each of the factories named in the sworn statement of the manufacturers, dated December 8, 1916, transmitted herewith, a record shall be kept, showing, in the case of each batch of condensed milk manufactured for exportation with benefit of drawback, the batch number, date of manufacture, quantity and identity of refined sugar

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used, quantity and character of fresh milk used, quantity of condensed milk produced, number and size of containers in which packed, and the brand name of the condensed milk. A sworn abstract from such manufacturing record, together with a certificate of manufacture covering each exportation of condensed milk, shall be filed with the drawback entry.

The quantity of refined sugar which may be taken as a basis of liquidation shall not exceed the quantity used in the manufacture of the exported condensed milk, as shown by the abstract from the manufacturing record.

Supplemental sworn statements and schedules covering factories, containers, or brands of condensed milk other than those specified in the sworn statement above referred to may be filed, and upon verification of the same drawback may be allowed on the products covered thereby exported on or after the date of receipt of the supplemental statements or schedules.

T. D. 34847 of October 20, 1914, is hereby revoked.

Respectfully, ANDREW J. PETERS,
(50632.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36890.)

*Stamping packages of wine.*

**Internal-revenue stamps may be affixed to casks or cases of imported wine instead of being attached to entries.**

TREASURY DEPARTMENT, *December 22, 1916.*

*To collectors of customs and others concerned:*

In connection with T. D. 36786 of November 6, 1916, attention is invited to the subjoined letter of the Commissioner of Internal Revenue, approved by the Secretary of the Treasury (T. D 2414, internal revenue), relative to the affixing of internal-revenue stamps to casks or cases of imported wine. You will be governed accordingly.

(105482.) ANDREW J. PETERS, *Assistant Secretary.*

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TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
*Washington, D. C., December 11, 1916.*

COLLECTOR FIRST DISTRICT, *St. Louis, Mo.*

SIR: This office is in receipt of your letter of the 2d instant, in reference to the payment of internal-revenue tax on imported wines, and to the desire of some importers in your district to stamp the packages or cases containing such wines, instead of affixing the required stamps to the customs entry, as provided in T. D. 36786 (customs) of November 6, 1916, and T. D. 2391 (internal revenue) of November 6, 1916.

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In reply, you are informed that the affixing of stamps to the customs entry in such cases is permitted as a matter of convenience to the importer, but where the importer prefers to stamp each package or case containing the wines this department sees no objection to having the tax paid in this manner.

The removal of packages so stamped may be arranged with the customs officers at your port.

W. H. OSBORN,
*Commissioner of Internal Revenue.*

Approved:
WM. P. MALBURN,
*Acting Secretary of the Treasury.*

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(T. D. 36891.)

*Drawback on camphor.*

Drawback on refined camphor produced by the American Camphor Refining Co., of Boston, Mass., wholly from imported crude camphor.

TREASURY DEPARTMENT, *December 23, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on refined camphor produced wholly from imported crude camphor by the American Camphor Refining Co., of Boston, Mass.

The allowance shall not exceed 1 pound of the imported camphor for each pound of refined camphor exported.

The sworn statement of the manufacturers, dated December 14, 1916, is transmitted herewith.

Drawback may be allowed under these regulations on refined camphor exported on or after November 17, 1916.

Respectfully, ANDREW J. PETERS,
(105650.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

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(T. D. 36892.)

*Drawback on condensed milk.*

Drawback on condensed milk manufactured by or for the account of the Hires Condensed Milk Co., of Philadelphia, Pa., with the use of refined sugar produced in whole or in part from imported raw sugar.—T. D. 35446 of May 25, 1915, revoked.

TREASURY DEPARTMENT, *December 23, 1916.*

SIR: Drawback is hereby allowed under paragraph O of section 4 of the tariff act of October 3, 1913, and the drawback regulations (chapter 18 of the Customs Regulations of 1915) on condensed milk manufactured by and for the account of the Hires Condensed Milk

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Co., of Philadelphia, Pa., with the use of refined sugar produced in whole or in part from imported raw sugar.

A manufacturing record shall be kept at each of the factories of the company manufacturing condensed milk for exportation with benefit of drawback, showing, in the case of each batch, the batch number, date of manufacture, quantity and character of milk used, quantity and indentity of refined sugar used, quantity of condensed milk produced, number and size of containers in which packed, and the brand name of the condensed milk. A sworn abstract from such manufacturing record, together with a certificate of manufacture covering each exportation of condensed milk, shall be filed with the drawback entry.

The quantity of refined sugar which may be taken as a basis for the allowance of drawback shall not exceed the quantity used in the manufacture of the exported condensed milk, as shown by the abstract from the manufacturing record.

Sworn statements of the Hires Condensed Milk Co., dated April 21, August 29, and November 3, 1916, covering factories located at Malvern, Pa., Ithaca, N. Y., South Dayton, N. Y., and Lake Odessa, Mich., respectively, are transmitted herewith. The sworn statement of the Federal Packing Co. is already on file in your office in connection with T. D. 35446 of May 25, 1915.

Sworn statements covering other factories may be filed, and upon verification thereof and approval by the department drawback may be allowed on the products of such factories under these regulations.

Supplemental sworn schedules covering brands of condensed milk or containers thereof other than those specified in the original sworn statements may be filed, and upon verification of such supplemental schedules drawback may be allowed on condensed milk manufactured and packed in accordance with the terms thereof and exported on or after the date of receipt of the supplemental schedule.

T. D. 35446 of May 25, 1915, is hereby revoked.

Respectfully, ANDREW J. PETERS,
(103704.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36893—G. A. 8005.)

*Stained glass.*

1. REPAIR PIECES OF STAINED GLASS.

Pieces of painted or stained glass intended for use in repairing painted or stained glass windows already in churches are not dutiable under the provision in paragraph 95, tariff act of 1913, for "stained or painted glass windows, or parts thereof," but are entitled to free entry under paragraph 655 as "stained or painted window glass * * * imported to be used in houses of worship."

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2. SAME—REGULATIONS.

While paragraph 655, tariff act of 1913, grants free entry to "stained or painted window glass or stained or painted glass windows imported to be used in houses of worship," the paragraph also provides that such exemption from duty "shall be subject to such regulations as the Secretary of the Treasury may prescribe." *Held*, that the regulation known as article 720 of the Customs Regulations of 1908, which was the only regulation in force at the date of these importations, and which provides for the filing of an affidavit on entry showing "that the articles were expressly imported for presentation to the institution named in the entry, together with letters of presentation and acceptance from the donors and donees, respectively," has no application to importations to be used in houses of worship. This window glass was not imported for presentation, nor was it necessary that it should be so imported in order to be entitled to free entry under paragraph 655.

United States General Appraisers, New York, December 20, 1916.

In the matter of protest 795009 of Perry, Ryer & Co. against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

*Curie, Smith & Maxwell* (*Herbert M. Wallace* of counsel) for the importers.

*Bert Hanson*, Assistant Attorney General (*Robert Hardison*, special attorney), for the United States.

Before Board 3 (WAITE, HAY, and SULLIVAN, General Appraisers; HAY, G. A., not participating).

WAITE, *General Appraiser:* The importation consists of pieces of painted or stained glass intended for use in repairing painted or stained glass windows which had already been placed in churches, the list of which churches was filed at the hearing. The appraiser reports that "the merchandise marked A consists of repair pieces of stained-glass windows." It was returned for duty at 30 per cent ad valorem under paragraph 95, tariff act of 1913, which provides for "stained or painted glass windows, or parts thereof." Protestants claim the goods are entitled to free entry under paragraph 654 or 655. No reference has been made to the claim under paragraph 654, and it is therefore overruled. That leaves for consideraation only the claim under paragraph 655, which grants free entry to "works of art, * * * including stained or painted window glass or stained or painted glass windows imported to be used in houses of worship."

The collector reports that—

These repair parts were not considered by this office as coming within the provisions of paragraph 655, nor were letters of presentation and acceptance furnished for them at time of entry, as required by articles 720–721, Customs Regulations of 1908. Duty was accordingly assessed at 30 per cent under paragraph 95.

The regulation in force at the time of entry of these goods is article 720 of the Customs Regulations of 1908, which reads as follows:

ART. 720. *Presentation to institution.*—Works of art, including pictorial paintings on glass, imported expressly for presentation to a national institution, or to any State or municipal corporation, or incorporated religious society, college, or other public

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institution, may be admitted to entry free of duties, upon the filing with the entry of an affidavit by the importer showing that the articles were expressly imported for presentation to the institution named in the entry, together with letters of presentation and acceptance from the donors and donees, respectively.

The entries in question were made on October 28, 1913, and June 18, 1914, which makes applicable the law of 1913. At the time of these importations no change in the regulation had been made. A change in the law had been made, however, paragraph 655 of the law of 1913 taking the place of paragraph 716 of the law of 1909. The paragraphs referred to read as follows:

*Act of 1909.*

716. Works of art, productions of American artists residing temporarily abroad, or other works of art, including pictorial paintings on glass, imported expressly for presentation to a national institution, or to any State or municipal corporation or incorporated religious society, college, or other public institution, except stained or painted window glass or stained or painted glass windows, and except any article, in whole or in part, molded, cast, or mechanically wrought from metal within twenty years prior to importation; but such exemption shall be subject to such regulations as the Secretary of the Treasury may prescribe.

*Act of 1913.*

655. Works of art, productions of American artists residing temporarily abroad, or other works of art, including pictorial paintings on glass, imported expressly for presentation to a national institution or to any State or municipal corporation or incorporated religious society, college, or other public institution, including stained or painted window glass or stained or painted glass windows imported to be used in houses of worship, and excluding any article, in whole or in part, molded, cast, or mechanically wrought from metal within twenty years prior to importation; but such exemption shall be subject to such regulations as the Secretary of the Treasury may prescribe.

The change which is of interest in this connection is found in the words, "including stained or painted window glass or stained or painted glass windows imported to be used in houses of worship."

As stated by the appraiser and collector, these goods were pieces of glass for repairs to be made to stained or painted glass windows in churches. The repairs were made necessary because of fractures or broken pieces which had to be supplied. These were imported for that express purpose. They were not leaded, but were just the stained or painted glass. We have no hesitancy in deciding that they were free of duty under the provision in paragraph 655 for stained or painted window glass. Objection, however, was made at the hearing that the regulations had not been complied with. It was contended by counsel for the importers that there were no regulations to be observed in an importation of this kind. Nothing was said in the brief on this point, however, and there is nothing in the record to enlighten us as to just what counsel had in mind. We conclude, however, on reading the law and reviewing the testimony, that the regulations in force were not applicable. For instance, the regula-

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tions require that an affidavit shall be filed with the entry by the importer "showing that the articles were expressly imported for presentation to the institution named in the entry." No institution was named in the entry; neither does the law require that an institution shall be named in the entry. The goods were not imported for presentation, so far as the record discloses; neither was it necessary that they should be imported for presentation. The language of the law is that they shall be free if "imported to be used in houses of worship." An institution, according to the dictionary definition, is a corporate body, and the word is used in paragraph 655 in that sense. "Houses of worship" should not be confounded with institutions mentioned in the first part of the paragraph.

There is a further requirement of the regulations that there shall also be filed with the entry letters of presentation and acceptance from the donors and donees, respectively. Such language would be inapplicable here, because paragraph 655, as stated above, does not require that stained window glass shall be *presented* in order to be free, and there is nothing in this case to show that this was presented. We are of the opinion that that part of the regulation is also inapplicable and not designed to cover an importation of this kind.

We therefore conclude there were no regulations in force at the time of this entry covering an importation of painted or stained window glass or painted or stained glass windows imported to be used in houses of worship. We find these were imported with that intention, and think the proof is sufficient to show that they were actually used for that purpose. Some objection was made on the part of the Government that the proof was insufficient to show that they were actually placed in the windows of the churches named in the record. We do not think, however, that that would be necessary. While it would be additional proof that the goods were imported to be used in a house of worship, the fact of the intention with which they were imported may, we think, be shown otherwise. The protest is therefore sustained.

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## *Abstracts of decisions of the Board of General Appraisers.*

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*Board 1*—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

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BEFORE BOARD 1, DECEMBER 15, 1916.

**No. 40483.**—Protests 790410, etc., of Borne, Scrymser Co. (New York).

GREASE FOR DRESSING LEATHER.—Merchandise invoiced as "degras stearin" and "wool grease," classified under the provisions of paragraph 44, tariff act of 1913, is claimed free of duty under paragraph 498, 561, 562, or 477

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Opinion by McCLELLAND, G. A. The oil or grease in question was found to be used in making leather dressing. It was held free of duty under paragraph 498. G. A. 7812 (T. D. 35894) followed.

No. 40484.—Protest 804273–59227 of John P. Daleiden Co. (Chicago).

ROSARIES—PROOF.

SULLIVAN, *General Appraiser:* The testimony on behalf of the protestants in this case shows that the merchandise consists of rosaries in chief value of metal, not plated with silver or gold or platinum, "similar to a decision more or less recently published" (the exact citation not being given). The examiner who passed the merchandise testified he would now classify it at 20 per cent under paragraph 167. This is the entire proof on behalf of the importers. We are without samples of the merchandise, and we are not informed as to whether the decision testified to by the protestants' witness is the American Bead Co. case (7 Ct. Cust. Appls., —; T. D. 36456) or the Malhami case, *infra*, which are the latest authorities on the subject of rosaries.

The merchandise was classified under that portion of paragraph 356 of the tariff act of 1913 which provides for metal articles valued above 20 cents per dozen pieces, designed to be worn on apparel or carried on or about or attached to the person, such as the articles enumerated in the paragraph, or like articles, and duty assessed thereon at 60 per cent ad valorem.

Many claims are enumerated in the protest, among them a claim for 20 per cent ad valorem under paragraph 167, which covers articles in chief value of base metal, not plated with gold or silver.

In United States *v.* Malhami (7 Ct. Cust. Appls., —; T. D. 36493), decided four months prior to the trial of this case, the Court of Customs Appeals had before it precisely similar articles classified and claimed as in this case, as will be seen from the following extracts from its opinion:

> The present record seems to indicate that the articles [rosaries] now upon appeal are composed in chief value of metal, and it is not denied that they are valued above 20 cents per dozen pieces. The actual competition in the case therefore is between the collector's assessment of the merchandise under paragraph 356, as above set out, and the assessment thereof as proposed by the importers under paragraph 167 of the act as manufactures composed in chief value of metal.
>
> * * * * * * *
>
> The record now before the court contains no testimony of any kind whatever, nor are there any samples exhibited in the case. The only information therefore which we possess concerning the character of the merchandise is that which may be derived from its name, from the official statements of the appraiser, and from the collector's assessment upon the same.

In that case the appraiser reported the articles to be rosaries designed to be worn on apparel or carried on or about or attached to the person, composed wholly or in chief value of metal, valued above 20 cents per dozen pieces. In the case at bar the collector in his letter transmitting the protest to the board for decision states that the merchandise consists of "certain rosaries, * * * returned by the appraiser as *articles to be carried on or worn about the person*, valued over 20 cents per dozen pieces, metal, chief value, not plated," and this statement is nowhere contradicted by the protestants, although before counsel at the trial.

The court then goes on to say:

> It must of course be assumed in the first instance that the collector's assessment of the merchandise was correct both in fact and law, and the only question in the case is whether the foregoing description of the articles rebuts that presumption, and sufficiently establishes the correctness of the competing assessment proposed by the importers.

The importers contend that rosaries are not "designed to be worn on apparel or carried on or about or attached to the person" in like manner with the articles which are

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enumerated as examples in paragraph 356. In this connection the importers' counsel say:

"Rosaries are a class of articles that stand all alone. They are separate and distinct from all other descriptions of merchandise, and are intended solely for devotional purposes, never for display. Indeed, to make a display of them would defeat the very purpose for which they are intended. They are always carried in some hidden receptacle, such as the pocket, reticule, or prayer book, and are only used during prayers. The rosaries in question are wanting in all of the essential particulars required by the Court of Customs Appeals in the case of United States *v.* Gallagher & Ascher (T. D. 35343), *supra*, to bring them within the provision of paragraph 356 for other articles, and hence are not included therein."

The importers must, of course, depend upon "common knowledge" as the basis of their foregoing statements, since the only other source of information in the present case is the appraiser's report above referred to, which distinctly contradicts these statements. * * *

The court then quoted several dictionary definitions of rosaries and said:

It will be observed that each of the foregoing definitions of rosaries states that there are some rosaries which are carried upon the person either for ornament or for mere personal convenience by way of occupying the fingers. The definitions are sufficient authority for the conclusion that within common knowledge some articles bearing the name of rosaries are worn upon the person for mere personal convenience and adornment. * * * And if it be true, as stated by the foregoing definitions and also by the appraiser, that certain forms of rosaries are in fact designed to be worn upon the person for mere personal convenience and adornment, we think that such articles would be within the descriptions of paragraph 356, under which the present merchandise was assessed. In such case the present articles should be assessed under that paragraph unless they be found to be more specifically described by some other provision of the same act. It is, however, at once apparent that the provisions of paragraph 356, *supra*, are more specific in their application to such merchandise as comes within them than the general provisions of paragraph 167 for articles composed in chief value of metal.

We therefore conclude that the present record does not sustain the action of the board in setting aside the collector's assessment of the articles now in question.

The appraiser's report is not testimony and can not become such unless offered in evidence, and then it is not the best. At most it is an opinion, easily controverted, and as a rule made after the collector has classified the merchandise. The collector's classification has force, and is presumptively correct. The fact that the component material of chief value is metal does not bring it within paragraph 167, if the merchandise has the qualifications mentioned in paragraph 356.

We are precluded from exercising our independent judgment on tariff matters. We are to be governed exclusively and alone by the record before us and can not take our own judgment as to the use of merchandise before us for classification, without proof of such use.

In United States *v.* Burley & Tyrrell Co. (5 Ct. Cust. Appls., 401; T. D. 34938) the court said:

In this case the component material of chief value was not a matter of which the board could take judicial notice, *and the board's expert knowledge of the merchandise*, if it had any, *could not of course be utilized by it in reaching a decision*. To hold otherwise would deprive the protestants of the right of cross-examination of adverse witnesses and would effectually block the review by this court of the facts on which the decision was based.

As, in this case, the knowledge of the board, whether derived from its own experience or from testimony adduced at other hearings, can not be considered as evidence, and as there was no evidence showing the relative values of the constituent parts of the merchandise, we think the board had nothing before it upon which it could safely or legally rest the conclusion that molded and not blown glass was the component material of chief value. [Italics ours.]

It is almost incomprehensible that litigants, who know the rulings of the board and court with reference to tariff litigations, will so far forget the necessary proof to overcome the presumption of correctness attaching to the collector's act. In this case the only effort made was to establish that the merchandise was metal, when

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that fact was already established by the collector's classification; so that this case is practically without any testimony to sustain the protest.

Under the facts in this case the decision of the collector is affirmed and the protest overruled.

DISSENTING OPINION.

BROWN, *General Appraiser*, dissenting: The testimony in this case reads as follows:

James B. Child, called as a witness for the importers, being duly sworn, testified as follows:

Q. Are you examiner of the rosaries the subject of this protest?—A. I am.

Q. Will you state the component material of chief value as ascertained by you on original examination, the value of the merchandise assessed for duty at 60 per cent?—A. Metal chief value, not plated with silver or gold or platinum.

Q. Are these similar to a decision more or less recently published on rosaries?—A. Yes.

Q. If you had the same merchandise before you now, how would you classify it?—A. Twenty per cent, under paragraph 167.

In my opinion, these statements of the Government expert who made the advisory classification fully established all the facts, which show that the classification under paragraph 356 was erroneous and that the goods should be classified at 20 per cent under paragraph 167.

No weight can be given the mere act of classification thus explained by the examiner who advised it, which would require the protest to be overruled as matter of law. When the examiner said that that if he now had the merchandise before him he would classify it under paragraph 167, he made a plain admission that the articles were the kind of rosaries which were used for devotional purposes and not as ornaments to be worn on or about the person, similar to those held dutiable under paragraph 167 (see to this effect the case of United States *v.* American Bead Co. (7 Ct. Cust. Appls., —; T. D. 36456), and the further admission that they were not beaded articles. Otherwise, he could not have said that he would now classify them under paragraph 167.

After this admission by the Government expert as to the character of the goods, it would have been surplusage to have proved it otherwise.

To overrule this protest with this evidence before us would, in my opinion, be giving too much weight to a presumption of law from the act of the collector in classifying the goods. Wigmore on Evidence (vol. IV, sec. 2491, p. 3534) says:

* * * The distinction between presumptions of fact and of law were a mere borrowing of misapplied continental terms. There is in truth but one kind of presumption, and the term "presumption of fact" should be discarded as useless and confusing.

Nevertheless, it must be kept in mind that the peculiar effect of a presumption "of law" (that is, the real presumption) is merely to invoke a rule of law compelling the jury to reach the conclusion *in the absence of evidence to the contrary* from the opponent. If the opponent does offer evidence to the contrary (sufficient to satisfy the judge's requirement of some evidence), the presumption disappears as a rule of law, and the case is in the jury's hands free from any rule.

In the case before us we are free to determine as facts by fair inference from the above testimony (performing a jury's function for that purpose) that the articles in question are devotional rosaries, not worn for personal adornment, in chief value of base metal, not plated with gold, silver, or platinum. From which conclusion it follows as matter of law that they should be classified under paragraph 167 at 20 per cent.

In the Malhami case (7 Ct. Cust. Appls., —; T. D. 36493) there was no evidence in the record other than the statement in the appraiser's report which, *in the absence of other evidence*, the Court of Customs Appeals construed to mean that the rosaries there involved were worn as decorations on the person; while in the case at bar there is a flat admission by the Government's expert to the contrary.

In my opinion, the protest should be sustained.



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**No. 40485.**—Protest 793308 of Geo. Borgfeldt & Co. (New York).

BEAD NECKLACES.—Necklaces with clasps, some composed of metal and others of colored glass beads, valued at over 20 cents per dozen pieces, were classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913. Similar necklaces valued under 20 cents per dozen pieces were classified as beaded articles at 50 per cent under paragraph 333. Numerous claims are made in the protest.

Opinion by SULLIVAN, G. A. On the record presented the protest was overruled and the classification under paragraphs 356 and 333 affirmed. American Bead Co. *v.* United States (7 Ct. Cust. Appls., —; T. D. 36259), United States *v.* Lun Chong & Co. (3 Ct. Cust. Appls., 468; T. D. 33041), and United States *v.* Burley (5 Ct. Cust. Appls., 401; T. D. 34938) cited.

**No. 40486.**—Protest 808022 of F. B. Vandegrift & Co. (New York).

PHOTOGRAPHIC SCREENS—OPTICAL INSTRUMENTS.—Photographic screens composed of two sheets of plain glass having a coat of gelatin and balsam between them, classified as optical instruments at 35 per cent ad valorem under paragraph 93, tariff act of 1913, are claimed dutiable as parts of photographic cameras at 15 per cent under paragraph 380.

Opinion by SULLIVAN, G. A. On the authority of Abstract 40173 the screens in question were held dutiable as parts of cameras under paragraph 380.

**No. 40487.**—Protest 772116 of American Bead Co. (New York).

CLASPS—PARTS OF NECKLACES.—Clasps for chains or necklaces, composed in chief value of metal, classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as parts of jewelry at 50 per cent under the same paragraph.

Opinion by SULLIVAN, G. A. On the authority of Mamluck *v.* United States (6 Ct. Cust. Appls., 556; T. D. 36198) the clasps in question were held dutiable at 50 per cent under paragraph 356.

**No. 40488.**—Protests 782445, etc., of Dieckerhoff, Raffloer & Co. et al. (New York).

MOHAIR DRESS GOODS.—Mohair dress goods and linings classified at 40 per cent ad valorem under paragraph 308, tariff act of 1913, are claimed dutiable as cloth in chief value of wool at 35 per cent under paragraph 288, or as wool dress goods or coat linings under paragraph 290.

Opinion by BROWN, G. A. On the authority of Rosenberg *v.* United States (7 Ct. Cust. Appls., —; T. D. 36510) the mohair dress goods and linings in question were held properly classified under paragraph 308.

**No. 40489.**—Protests 776661, etc., of P. H. Petry & Co. (New York).

GENTIAN ROOT.—Merchandise classified as gentian root at one-fourth of 1 cent per pound under paragraph 39, tariff act of 1913, is claimed free of duty under paragraph 477, 552, 584, or 595.

Opinion by BROWN, G. A. Protests unsupported; overruled. Abstract 39291 cited.

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BEFORE BOARD 3, DECEMBER 15, 1916.

**No. 40490.**—Protest 797414 of Japanese Fan Co. (New York).

SHORTAGE OF VASES.—It is claimed here that an allowance should be made because of the nonimportation of certain vases.

Opinion by WAITE, G. A. The nonimportation of the vases in this case was established and the protest sustained.

**No. 40491.**—Protest 783529 of Lord & Taylor (New York).

MILITARY ORNAMENTS—SHORTAGE.—It is claimed in this case that there was a short shipment of military ornaments and also that epaulets are not classifiable as ornaments under paragraph 358, tariff act of 1913.

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Opinion by WAITE, G. A. On the authority of Horstman *v.* United States (6 Ct. Cust. Appls., 458; T. D. 35986) the epaulets in question were held properly classified under paragraph 358. An allowance was granted for the items which were short shipped.

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REHEARINGS GRANTED.

DECEMBER 5, 1916.

**No. 40492.**—JEWELER'S TWEEZERS.—Protest 794432-58150 of Sears, Roebuck & Co. Abstract 40370.

**No. 40493.**—TOYS.—Protest 794431-58138 of Sears, Roebuck & Co. Abstract 40387.

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REHEARINGS DENIED.

DECEMBER 12, 1916.

**No. 40494.**—WOOL.—Protest 774992 of F. B. Vandegrift & Co., G. A. 7974 (T. D. 36743).

BROWN, *General Appraiser:* At the trial of this suit in Philadelphia the Government, while admitting the classification by the collector as a wool pile fabric at 40 per cent under paragraph 288, act of 1913, was erroneous, contested the case on the theory that the goods were properly dutiable as a manufacture of wool, by similitude, under paragraph 386. The importer rested his case upon the chief claim in the protest that the merchandise was dutiable as "cloths if made in chief value of cattle hair or horsehair, not specially provided for," under paragraph 288. So that the question of whether or not the goods were braided articles was not in issue.

In our decision, G. A. 7974 (T. D. 36743), sustaining the claim of the importer under the cattle-hair cloth provision, we held that the articles fell directly within the meaning of the provision for cloths if made in chief value of cattle hair—

> First, because the articles in question (being two pieces of cattle-hair cloth sewn together and trimmed with braid) may be properly denominated cattle-hair cloth, for the reason that it is almost wholly composed of that material; second, in the absence of any provision for manufactures of cattle-hair cloth there is no reason to draw any distinction between manufactures of a material and the material itself, as, by the new provision for cattle-hair cloth, it is manifest, in our opinion, that Congress intended to cover such cattle-hair goods as the articles in controversy, which are made of cloth and so slightly removed by manufacture from the cloth itself.

And for the further reason that if the above conclusion that they were directly within the cattle-hair provision was erroneous, then they were so dutiable by similitude.

The Government now, for the first time, by motion asking a retrial, claims that the merchandise is dutiable as a braided article, stating—

> The ground of this application is that the decision is in conflict with an express statute and with controlling decisions in that it resorted to the similitude clause, whereas the goods are specifically provided for in paragraph 358 of said act as articles in part of braid.
>
> The correctness of the classification herein suggested was affirmed by the board in G. A. 7596 (T. D. 34754) and by the Court of Customs Appeals in Morimura *v.* United States (6 Ct. Cust. Appls., 475; T. D. 36119).

At the trial in Philadelphia, the examiner, called as a witness on behalf of the protestant, had testified that the merchandise was made of two pieces of cloth composed of cattle hair sewn together and trimmed with braid, and we quoted that description in our opinion, the question of whether or not it was braided not being in contest. Apparently, based upon the use of that term in the opinion, the claim is now made that it should be classified as an article in part of braid.

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It is, in fact, a misnomer to describe the samples as braided articles. The robe is surrounded by a binding to finish it, which is not intended in any way for the purpose of decoration, and it is this binding that the examiner referred to in using the expression "trimmed with braid." This binding, if it came in separately, would manifestly be classified under paragraph 262 as "bindings" and not under the braid provision. Consequently, when attached to the robe it would simply be an added binding and would not convert the robe into a braided article. This is manifest from an examination of the sample itself.

The philosophy of the braid provision in paragraph 358 is clearly stated by Judge Barber in the case of United States *v.* Snow's United States Sample Express Co. (6 Ct. Cust. Appls., 120; T. D. 35388). In speaking of the clause therein, which the Government now claims should control the classification, reading "articles made in whole or in part of any of the foregoing fabrics or articles," he says (p. 122) that—

Clause 8 is inserted for the purpose of establishing that any articles, whether wearing apparel or not, which are made wholly or in part of any of the woven fabrics or articles thereinbefore mentioned, shall not escape classification under the paragraph solely because they have been used as materials.

Adding (p. 126)—

Our first conclusion is also supported by the further fact, already pointed out, that the term "of whatever yarns, threads, or filaments composed" is not employed in paragraph 358 for the purpose of enlarging in any way its scope or to increase in any manner the specificity of any *eo nomine* or descriptive term thereinbefore employed, but is rather designed to prevent the escape of any of the merchandise already named in the paragraph from assessment thereunder, solely by reason of a claim founded upon any peculiar or distinctive feature of the yarns, threads, or filaments from which the same had been manufactured.

And the case of Morimura *v.* United States (6 Ct. Cust. Appls., 475; T. D. 36119), cited by the Government in support of its motion, does not modify in any way the rule stated by Judge Barber, but simply holds that a Japanese lamp shade which was clearly decorated with what was unmistakably braid, came within the braid provision because in part of braid, as it undoubtedly was.

Moreover, the braid provision is grouped in the tariff act along with the other high-taxed luxuries and novelties, at the 60 per cent rate, and it would be going far afield to place thereunder a cattle-hair article such as this, which to prevent fraying of the edges is bound together with a binder.

The motion for rehearing is therefore overruled.

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BEFORE BOARD 1, DECEMBER 18, 1916.

**No. 40495.**—Protest 665519 of B. Altman & Co. (New York).

DUPLICATE PROTEST.—This protest is a duplicate of one decided in Abstract 37729. Opinion by SULLIVAN, G. A. Protest dismissed.

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BEFORE BOARD 3, DECEMBER 18, 1916.

**No. 40496.**—Protest 797795 of Gillespie Bros. & Co. (New York).

RUM IN JUGS—PACKAGE.

WAITE, *General Appraiser:* The commodity imported in this case consists of 3 jugs of rum invoiced as "one box samples rum, 3 gallons." The protest has been submitted without the introduction of testimony, the report of the appraiser being admitted in evidence by agreement of counsel. Such report reads as follows:

The merchandise consists of one box containing 3 1-gallon stone jugs of rum, 157° proof. This would be equivalent to total of 4.71 gallons. It was returned for duty,

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however, as though the box contained 12 jugs, equivalent to 18.84 gallons, at $2.60 per gallon, paragraph 244, and the jugs at the same rate as if imported empty, namely, 15 per cent ad valorem, paragraph 78, act of 1913. Note G. A. 3626 (T. D. 17487), sustaining this action.

That portion of paragraph 244 referred to in the appraiser's report and material to the consideration of this issue reads as follows:

244. * * * Wines, cordials, brandy, and other spirituous liquors, including bitters of all kinds, and bay rum or bay water, imported in bottles or jugs, shall be packed in packages containing not less than one dozen bottles or jugs in each package, or duty shall be paid as if such package contained at least one dozen bottles or jugs, and in addition thereto duty shall be collected on the bottles or jugs at the rates which would be chargeable thereon if imported empty.

From the collector's report we learn that he treated the package containing the 3 jugs of 1 gallon each as though it contained a dozen jugs each filled with 1 gallon of rum of 157° proof, and upon the number of proof gallons thus determined, being 18.84, duty was assessed at $2.60 per gallon.

Protestant claims that the quantity on which duty should be assessed is 3 gallons at 157° proof, or 4.71 gallons, instead of 18.84 gallons, his contention being based on the claim that the provision in paragraph 244, above cited, that duty shall be paid as if each package contained 1 dozen bottles or jugs, means the usual commercial jug of 1 quart; and he further states that as this package contained 3 jugs of 1 gallon each, and the law does not state similar jugs, as interpreted by the collector, that only such an amount as indicated above, namely 4.71 gallons, should be assessed for duty.

We are not enlightened as to just what is meant by "the usual commercial jug of 1 quart." There is no evidence showing what the commercial jug is, nor what is considered the usual commercial jug. The statute certainly does not use that expression. The language is, that in case there are not 1 dozen bottles or jugs in each package, "duty shall be paid as if such package contained at least one dozen bottles or jugs." There is in the first part of the paragraph, where still wines, including ginger wines or ginger cordial, vermuth, and rice wine or sake are provided for, a provision with reference to the duty upon a certain number of quart bottles, and bottles containing not more than 1 pint. That provision, however, has no reference, as we understand it, to the provision here in question; and it may well be presumed that had Congress intended to limit the size of the bottle or jug, it would have done so by express terms in the latter part of the paragraph. It is true, as claimed by the importers, that the law does not state similar jugs. We can not reason, however, that it was thus intended to limit them to quart jugs. We are rather of the opinion that it was intended that they should be such jugs as were then under consideration, or had been imported in numbers less than a dozen in a package.

The precise question seems to have been passed upon in an early decision of the board, cited by the appraiser above (G. A. 3626; T. D. 17487), where the following language was used:

There is no restriction imposed upon the capacity of the bottles containing spirituous liquors, but under the terms of the tariff there must be 12 bottles actual or estimated in each case, and we think the collector was justified in determining the quantity of liquor contained in the 2 bottles in each case and assessing duty on six times that quantity, the equivalent of 12 bottles in each case.

The statute at that time did not specify jugs, and the packages there under consideration differ from the one before us now in having 3 bottles in the package instead of 3 jugs. The principle, however, is the same. Following that decision we affirm the action of the collector.

The protest contains also the claim that the jugs are unusual coverings. There is nothing to show that they were unusual, and if they were it would only serve to authorize the assessment of duty on them as an extra commodity, which seems to be

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he intention under the statute following the conclusion we have already reached in the premises.

The protest is overruled in all respects.

**No. 40497.**—Protests 795052, etc., of Celli & Del Papa (Galveston).

WINE—CAPACITY OF BOTTLES.

WAITE, *General Appraiser:* The importation in question in protest 795052 is 50 cases of wine, each case containing 12 bottles.

The wine was assessed under that part of paragraph 244, tariff act of 1913, which reads as follows:

244. Still wines, * * * per case of one dozen bottles or jugs, containing each not more than one quart and more than one pint, * * * $1.85 per case; and any excess beyond these quantities found in such bottles or jugs shall be subject to a duty of 6 cents per pint or fractional part thereof * * *.

The protest is in the following language:

In the matter of consumption entry No. 60, covering 50 cases of wine ex steamship *Catalina*, September, 1915, reliquidated October 27, 1915, we beg to protest against the assessment of duty greater than $1.85 per case on the ground that the contents of the bottles do not warrant a greater rate.

At the hearing counsel for the Government moved to dismiss the protest on the ground of vagueness and indefiniteness. Decision on this motion was reserved to be decided when the case was decided. We conclude that the protest is sufficiently definite so that the claim of the importers may be determined, which is that assessment has been made on the excess on a wrong basis.

The return of the gauger shows that each bottle contained 0.575 of a fluid ounce in excess of 1 quart. This is arrived at by an estimate from the measurement of a certain number of bottles, we are led to understand from the testimony; just how many were measured we do not know. Suffice it to say that no question is raised over the quantity found by the gauger. The only question is whether duty should have been assessed at 6 cents per pint upon the excess found in each bottle—in other words, upon a pint for each bottle—or whether it should have been assessed on the excess of pints, at 6 cents per pint or fractional part thereof, found in each case or found in the entire shipment. If the case had been taken as the unit of quantity upon which the excess should be determined, there would be more fractional pints assessed as pints than as though the whole shipment were taken, and necessarily, of course, the duty would have been increased. The question whether the case or the whole shipment should be taken as the unit of quantity is immaterial in deciding this protest. The same question seems to have arisen in previous cases before the board and the courts. In the case of George S. Bush & Co., G. A. 5518 (T. D. 24858), the contention of the Government was supported. The decision construed a similar provision found in the law of 1897, and the board held the additional duty should be assessed according to the number of bottles containing an excessive quantity and not according to the total excess per case. That decision was followed by the board in Abstracts 278 and 280 (T. D. 25000) and Abstract 363 (T. D. 25023), and on appeal these decisions of the board were affirmed by the United States Circuit Court for the Northern District of California in De Fremery *v.* United States (117 Fed., 677; T. D. 29729), which followed the decision of the Supreme Court of the United States in United States *v.* Cerecedo Hermanos y Compania (209 U. S., 337; T. D. 28954). We conclude, therefore, that this is not an open question. Following the cases cited, we overrule the protest.

The record in the above case has been incorporated in protest 804642; hence we conclude it is desired that a decision be made on the same state of facts. The claim, however, in protest 804642 is a little different than in the above case in that the contention is made that the quantity found in excess is a negligible quantity; otherwise the principle is the same. It being conceded that the quantity reported in excess

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is more than one-half fluid ounce, we do not think we are at liberty to regard it as negligible. We therefore overrule the protest on all claims.

**No. 40498.**—Protest 790663 of John Wanamaker (New York).

STATUES OF BRONZE AND MARBLE—SCULPTURES—EVIDENCE.

WAITE, *General Appraiser:* The claim of the importer in this case is that the two pieces of statuary in question, one of bronze, marble, and ivory, and the other of bronze with a marble base, should be free of duty under paragraph 611 or 652, tariff act of 1913, or, if not free under either of those paragraphs, are dutiable under paragraph 376 at 15 per cent ad valorem as sculptures. They were assessed for duty under paragraph 167 at 20 per cent ad valorem as manufactures in chief value of metal.

The testimony, we think, tends to show that the articles are works of art. The appraiser in his report states they would now be returned for duty under paragraph 376 in accordance with Abstract 37846. The case at bar, however, differs from that case in that the mold in that case was shown to have been made by a professional artist. The only testimony in this case is given by the buyer for the importer, the one who has had charge for many years of purchasing this kind of goods. However, he was not able to swear that the articles were produced, or the mold was made, by an artist, either professional or otherwise, except from his inspection of the pieces. We do not think that is sufficient to bring this case within the scope of the decision reported as Abstract 37846, *supra*. The testimony does not show that the articles are made by a professional artist. As we read the decisions of the Court of Customs Appeals in United States *v.* Halle (6 Ct. Cust. Appls., 543; T. D. 36196) and United States *v.* Downing (6 Ct. Cust. Appls., 545; T. D. 36197), we understand it is held by that court that in order to be dutiable under paragraph 376, sculptures must be shown to have been produced by professional sculptors. In the Downing case the court used the following language:

> In the common acceptation of the term, a work to be entitled to the characterization of sculpture must be the production of a professional sculptor. It must be a work that embodies professional skill, taste, touch, and artistic conception, appealing not only to the eye but the emotions as well, and although "sculptures" may include under the statute copies of recognized works of that art, yet such copies must possess the same qualities or characteristics, and, whether an original or a copy, must be made either by or under the supervision of a professional sculptor.

In the case at bar, while the witness states it as his belief that these statues were the work of professional sculptors, or made under their immediate supervision, we can not say that we think the fact has been proved, as the statement is merely the witness's opinion based upon an examination of the articles themselves. Such proof we are not prepared to accept, in the face of the decisions above cited. The claim is therefore overruled.

A further claim for discount of 5 per cent on the duties assessed is contained in the protest, but no reference was made to this claim at the hearing and it is therefore overruled.

The protest is overruled in all respects.

**No. 40499.**—Protest 797700-50571 of Sears, Roebuck & Co. (Chicago).

SHORTAGE.—It is claimed that duty was paid on a shortage of 200 yards of embroideries.

Opinion by WAITE, G. A. Protest unsupported; overruled.

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BEFORE BOARD 1, DECEMBER 20, 1916.

**No. 40500.**—Protest 806743 of Youngberg & Son (San Francisco).

LEAF TOBACCO.—The question here is whether certain tobacco imported from Cuba should be assessed as wrapper or filler under the provisions of paragraph 181, tariff act of 1913.

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Opinion by McClelland, G. A. It was found that the tobacco in question is not wrapper but filler, and it was held dutiable at 35 cents per pound under paragraph 181, tariff act of 1913.

**No. 40501.**—Protests 802413, etc., of Geo. Borgfeldt & Co. (New York and Baltimore).

Bead Necklaces—Jewelry.—Cheap necklaces and neck chains classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as beaded articles at 50 per cent under paragraph 333.

Opinion by Sullivan, G. A. It was held that the evidence was not sufficient to prove that the collector's action was wrong. United States *v.* Kraemer (5 Ct. Cust. Appls., 294; T. D. 34474), Horsfield *v.* United States (1 Cust. Ct. Appls., 138; T. D. 31186), and United States *v.* Burley (5 Ct. Cust. Appls., 401; T. D. 34938) cited.

**No. 40502.**—Protests 772100-55794, etc., of Marshall Field & Co. (Chicago).

Bead Necklaces—Bracelets—Jewelry.—Necklaces, neck chains, long chains, and bracelets, composed of colored glass beads strung on cotton or silk thread, having metal clasps, classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as beaded articles at 50 per cent under paragraph 333, as manufactures of glass or paste at 30 per cent under paragraph 95, or as articles composed of colored glass at 45 per cent under paragraph 84.

Opinion by Sullivan, G. A. It was found that the articles in question are used as jewelry and they were held properly classified under paragraph 356. Mamluck *v.* United States (6 Ct. Cust. Appls., 556; T. D. 36198) and United States *v.* Morimura (7 Ct. Cust. Appls., —; T. D. 36801) cited.

**No. 40503.**—Protests 742915-48711, etc., of Marshall Field & Co. (Chicago).

Beaded Articles.—Ornaments and fringes composed of beads strung on cotton thread, classified as beaded articles at 50 per cent under paragraph 333, tariff act of 1913, are claimed dutiable as manufactures of glass or paste at 30 per cent under paragraph 95. Other claims are made.

Opinion by Sullivan, G. A. Protests overruled. United States *v.* Morimura (7 Ct. Cust. Appls., —; T. D. 36801) followed.

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Before Board 3, December 20, 1916.

**No. 40504.**—Protest 800701-48544 of Sears, Roebuck & Co. (Chicago).

Shortage of Clarinets.—It is claimed in this case that there was a shortage of four clarinets.

Opinion by Waite, G. A. It was not satisfactorily proven that the clarinets in question were not received. Protest overruled.

**No. 40505.**—Protest 797794 of R. F. Downing & Co. (New York).

Coverings of Chocolate—Value.—This protest is against the payment of additional duties on certain chocolate on the ground that the appraiser, the single general appraiser, and the board erred in making their appraisement, the contention being that the coverings are not subject to appraisement.

Opinion by Waite, G. A. It was held that under the terms of paragraph 231, tariff act of 1913, under which the chocolate was assessed, it becomes necessary to make the appraisal include the immediate coverings. Protest overruled.

**No. 40506.**—Protests 796815-6817, etc., of Mente & Co. (New Orleans).

Waste Bagging—Paper Stock.—Merchandise invoiced as old jute bagging for covering cotton, classified as waste at 10 per cent ad valorem under paragraph 384, tariff act of 1913, is claimed entitled to free entry as paper stock under paragraph 566 or 408.

Opinion by Waite, G. A. It was found that possibly some of the goods are fit only for paper stock, but no percentage was shown. Protests overruled.

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(T. D. 36894.)

*Oriental stripes.*

Appeal directed from decision of the Board of United States General Appraisers of October 30, 1916, Abstract 40358, involving the classification of oriental stripes.

TREASURY DEPARTMENT, *December 26, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 22d instant, inviting attention to the decision of the Board of United States General Appraisers, dated October 30, 1916, Abstract 40358, wherein it is held that certain oriental stripes which had been assessed with duty at the rate of 60 per cent ad valorem under paragraph 339 of the tariff act of 1897 were properly dutiable as cotton cloth at the appropriate rates under paragraphs 304 to 309 of the said act.

In accordance with your recommendation, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of October 5, 1909.

Respectfully, ANDREW J. PETERS,
(100487.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

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(T. D. 36895.)

*Emol-Keleet dusting powder.*

Appeal directed from decision of the Board of United States General Appraisers of October 25, 1916, Abstract 40324, involving the classification of "Emol-Keleet dusting powder."

TREASURY DEPARTMENT, *December 26, 1916.*

SIR: I have to acknowledge the receipt of your letter of the 20th instant, inviting attention to the decision of the Board of United States General Appraisers of October 25, 1916, Abstract 40324, involving the classification of merchandise described as "Emol-Keleet dusting powder" which had been assessed with duty as a toilet preparation under paragraph 48 of the tariff act at the rate of 60 per cent ad valorem and which was held to be properly dutiable at the rate of 20 per cent ad valorem under paragraph 17 of the said act.

In accordance with your recommendation, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in accordance with the provisions of subsection 29 of section 28 of the tariff act of October 5, 1909.

Respectfully, ANDREW J. PETERS,
(105786.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

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(T. D. 36896.)

*Samples.*

**Duty to be assessed upon all samples unless the same are articles of a character entitled to admission free of duty under some paragraph of the free list.—T. D. 35539 of June 19, 1915, and articles 429 and 430 of the Customs Regulations of 1915 hereby revoked.**

TREASURY DEPARTMENT, *December 21, 1916.*

SIR: Under date of June 19, 1915, the department promulgated regulations (T. D. 35539) governing the free entry of samples. These regulations provided in part that textile fabrics not exceeding 9 inches in length should be considered as of no commercial value and admitted free without bond for their exportation and without being cut, punched, slashed, or perforated, and that samples of textile fabrics exceeding 9 inches in length should be assessed with duty if not entered under bond for exportation, unless cut, slashed, punched, or indelibly stamped across the face in such manner as to destroy their value as merchandise.

The correspondence on file in the department shows that these regulations are neither satisfactory to importers of these samples nor to the domestic manufacturers of textile fabrics. The importers claim that 9-inch samples are inadequate for sample purposes in almost every line of fabric, laces, etc., and that when these samples exceeding 9 inches in length are cut, slashed, etc., their values as samples are impaired in some cases and in others wholly destroyed. The domestic manufacturers, on the other hand, complain of the large quantities of textile samples admitted free of duty under T. D. 35539 and contend that there is no provision of law authorizing the free entry of these samples.

Under various regulations promulgated by the department it has been the practice for approximately 50 years to pass free of duty samples of the character under consideration when returned by the appraiser as of "no commercial value" or "no mercantile value." The department's regulations for the period mentioned have apparently been based upon the theory that *merchandise* only is subject to duty and that samples which are not suitable for sale, but are used for the purpose of selling the class of goods they represent, have no commercial or mercantile value and are not "merchandise." See T. D. 146 of June 11, 1868, T. D. 4828 of April 9, 1881, article 398, Customs Regulations of 1884, and T. D. 31771 of July 25, 1911.

The department, after careful consideration of this question, has reached the conclusion that there is no warrant of law for the position taken by the department in the decisions cited that articles not "merchandise" are exempt from duty. In this connection, attention is invited to the fact that the enacting clause of the present tariff act provides that "there shall be levied, collected, and paid upon all

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articles," etc., and that this phraseology is used in the enacting clauses in the five tariff acts preceding.

Although the importers of samples argue, and it would seem with reason, that a practice, based upon the regulations cited, which has continued without interruption for nearly 50 years, during which period five tariff acts, not including the present one, have been passed, has the force and effect of law, the Board of United States General Appraisers and the United States Court of Customs Appeals do not appear to have adopted this view.

The board, in Abstract 31637 (T. D. 33632), uses this language:

> No part of the statute provides that samples are free. Regulations have been promulgated by the Secretary of the Treasury * * * directing that certain samples of whatever value, if used bona fide for samples, are free. We do not think there is any warrant in the statute for such a regulation.

The United States Court of Customs Appeals, in T. D. 33535, refers to the contention of the importers in their brief that the practice of admitting samples free of duty had been so long and well established by the regulations of the Treasury Department and the practice thereunder that it could not be changed except by act of Congress. Commenting upon this, the court said:

> We do not agree with this view. It is only by virtue of the rulings of the department that any samples have been admitted to free entry, because those samples, as well as others, are within the term "merchandise," as defined in section 2766, Revised Statutes * * *.
>
> The importers at best can only claim under the *favor* of the Treasury regulations.

On account of the long-continued practice in admitting these samples free of duty, the department would be inclined to adopt the views of the importers in this regard, notwithstanding the opinions expressed by the board and the court in the decisions cited above, if it were not for the fact that Congress, in the present tariff act, apparently took legislative notice of the department's regulations governing the free entry of samples, as it provided specifically in paragraph J, subsection 4 of section 4, for the free entry of samples imported solely for use in taking orders for merchandise.

It will be noted, however, that this provision is in the nature of a limitation rather than an approval of the department's regulations, for under it samples are only free if a bond is given for their exportation within six months from the date of importation. In view of this legislation by Congress on the subject, and as there is no other provision in the tariff act specifically providing for the free entry of samples as such, the department has reached the conclusion that it is without authority of law to permit the entry free of duty of samples, except as provided in paragraph J of subsection 4 of section 4 of the tariff act.

T. D. 35539 of June 19, 1915, and articles 429 and 430 of the Customs Regulations of 1915 are accordingly hereby revoked, and

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you are directed, 30 days from the date hereof, to assess duty upon all samples on the value returned by the appraiser or on the entered value, if higher than the appraised value, unless the same are articles of a character entitled to admission free of duty under some paragraph of the free list.

Respectfully, ANDREW J. PETERS,
(80555.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 36897—G. A. 8006.)

*Sufficiency of protest—Product of petroleum.*

1. A protest against the collector's classification of merchandise objected to on the part of the Government on the following grounds: (1) That the paragraph of the tariff act under which claim is made is erroneously referred to as 661; (2) that it fails to specify the tariff act under which the merchandise should have been classified, and claims that the merchandise is *dutiable* under a paragraph in the free list. *Held*, that inasmuch as the protest correctly describes merchandise, free entry for which is provided in paragraph 561, the error in naming the paragraph as 661 instead of 561 was not fatal; neither was it a fatal defect to fail to specify in the protest the tariff act under which claim was made, the presumption being that such claim was made under existing law, rather than a law that had been repealed; neither was it error to claim the merchandise dutiable under a paragraph in the free list.

2. The protest was sufficiently specific to direct the collector's attention to his own classification, the fact that it was claimed that his assessment was erroneous, and the claim of the importer as to the nature and character of the merchandise and what its classification should have been.

3. A distillate of Peruvian crude oil, a crude petroleum, is a product of petroleum and entitled to entry free of duty under paragraph 561 of the tariff act of 1913.—Lichtenstein *v.* United States (1 Ct. Cust. Appls., 79; T. D. 31105), Arthur *v.* Dodge (101 U. S., 34), and United States *v.* Salambier (170 U. S., 621) cited.

United States General Appraisers, New York, December 22, 1916.

In the matter of protest 803765 of E. M. Mathis against the assessment of duty by the collector of customs at the port of Ogdensburg.

[Reversed.]

*Guy Wellman* for the importer.

*Bert Hanson*, Assistant Attorney General (*Chas. D. Lawrence*, special attorney), for the United States.

Before Board 1 (MCCLELLAND, SULLIVAN, and BROWN, General Appraisers).

MCCLELLAND, *General Appraiser:* The merchandise involved is described on the invoice as "5 cases lubricating oil." It was assessed with duty at the rate of 15 per cent ad valorem under paragraph 385 of the tariff act of 1913. Against such assessment protest is lodged in the following language:

I hereby protest against the liquidation and assessment of duty as made by you on consumption entry for 5 cans oil, value $50, on which duty was assessed at 15 per cent as lubricating oil imported by me in the National Express from Port Moody, British Columbia, and entered for G. M. Saybolt, April 12, 1916.

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I claim that same is properly dutiable under paragraph 661 of the tariff act as a petroleum product, with no other ingredients, termed "petroleum lubricating distillate."

I protest against the payment of any and all duties not legally chargeable upon said importation, and hereby especially reserve all questions of law or fact that may arise and pay the amount exacted under duress and compulsion, to obtain and retain peaceable possession of said goods, holding you and the Government responsible for its return.

Preliminary to the taking of testimony on the trial counsel for the Government objected to the introduction of any proof as to the character of the merchandise on three grounds—(1) that the protest is defective in that it claims that the merchandise is *dutiable* under paragraph *661* as a petroleum product, while there is no such paragraph in the existing tariff law; (2) that the protest names no particular tariff act under which claim is made; (3) that counsel for protestant claims the merchandise is free, while the protest claim is that it is dutiable.

Paragraph N of section 3 of the tariff act of 1913 provides—

That the decision of the collector as to the rate and amount of duties chargeable upon imported merchandise * * * shall be final and conclusive against all persons interested therein, unless the owner, importer, consignee, or agent of such merchandise * * * shall, within thirty days after but not before such ascertainment and liquidation of duties, * * * if dissatisfied with such decision imposing a higher rate of duty * * * file a protest or protests in writing with the collector setting forth therein distinctly and specifically, and in respect to each entry or payment, the reasons for his objections thereto. * * *

The primary function of a protest is to direct the attention of the collector to the fact that the protestant claims that an error has been made in the classification of his merchandise, and to point the collector to the provision of the statute under which classification should have been made. This office of the protest is plain. It is that the collector may have opportunity to change the classification if satisfied that the protest claim is well founded. A protest not sufficiently specific to accomplish this end would not be in compliance with the statute above quoted.

In Lichtenstein *v.* United States (1 Ct. Cust. Appls., 79; T. D. 31105), passing upon the sufficiency of a protest, Judge Montgomery, writing for the court, said:

It is not essential that the importer shall in the protest "hit the bird in the eye." But it is essential that he state his claim with such reasonable clearness and certainty as to acquaint the collector with the real ground of his complaint.

It may be that by naming paragraph 661 instead of 561 the protestant in this case failed to "hit the bird in the eye," but we think that the protest description of the merchandise as "a petroleum product with no other ingredients, termed 'petroleum lubricating distillate,'" was sufficiently clear and specific as to the claimed

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dutiable character of the merchandise to lead the collector to the paragraph relied upon, even though it was cited as 661 instead of 561. The fact that there is no paragraph 661 in the existing tariff law, together with the added fact that paragraph 561 of that law contains the only provision in the act for products of petroleum, would seem to warrant the conclusion that the collector could not have been misled by the error in naming the paragraph.

The second objection to the protest, viz, that it did not name the tariff act under which the claim is made, is clearly untenable, we think, for at least two reasons: First, the protest recites that the merchandise was imported from Port Moody, British Columbia, and entered *April 12, 1916*, and it follows that it could not have been classified under any statute other than that existing at the date of importation; second, that in the absence of a statement of the year when the tariff act claimed under was enacted it is to be presumed that the claim was made under a provision of an existing statute, rather than under a provision of some repealed statute.

Equally untenable is the objection to the use of the word "dutiable" in the specified claim under a paragraph in the free list. It surely would not be contended for the Government that if the merchandise was correctly described and the paragraph claimed under was correctly numbered in the protest that the mere misuse of the word "dutiable," as in this instance, would nullify the protest, and thus perhaps deprive the protestant of the return of money wrongfully exacted by the collector and to which he, the protestant, might otherwise be clearly entitled.

In Arthur *v.* Dodge (101 U. S., 34) it was likewise held that—

> A protest against the payment of illegal duties is sufficient if it is "so distinct and specific as to apprise the collector of the nature of the objection made to the duty imposed."

In United States *v.* Salambier (170 U. S., 621) it was said:

> The collector could not have been perplexed by the omission to name the specific paragraph which the importer sought to have applied, for there were but two paragraphs, besides 239, which dealt with the subject, namely, paragraphs 318 and 319, and under either of them the duty was that claimed by the importer.

The third objection to the taking of testimony under the protest, above stated, on the ground that protestant's counsel claimed the merchandise free, while the protest claims it is dutiable merits no discussion further than to say that counsel correctly stated his client's claim; but even if in opening his case he had erred in stating the issue, protestant could not be denied the privilege of proving his claim by competent testimony.

We hold the protest to be sufficiently specific to comply with the statute, and therefore proceed to consider the issue presented on its merits.

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It is disclosed by the record that the merchandise involved was the property of the Standard Oil Co. of New Jersey, and Clarence J. Robinson, a chemist, shown to have been in its employ for 25 years, was called to testify. His testimony shows that during all of that period he has been examining, among other substances, petroleum products. He states that the merchandise in question was imported on his suggestion in order that he might conduct certain experiments with it; that he personally took from one of the cans in the importation a sample, which he analyzed for the purpose of determining whether it was a petroleum product without any admixture. This sample he found to be a distillate of Peruvian crude oil, a crude petroleum, the word "Peruvian" in the name simply indicating the country of origin. His test showed the specific gravity to be 23.2° Baumé, the flash 350° F., the viscosity 260 at 100° F., Saybolt instrument, and the boiling point 630° F. The results of the witness's tests, as stated by him in the record, are not controverted by the Government, and, the evidence being ample to overcome any presumption which attaches to the collector's classification, we find as a fact that the merchandise is a product of petroleum and *hold* it to be entitled to free entry, as claimed, under paragraph 561 of the tariff act of 1913.

Decision of the collector reversed.

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(T. D. 36898—G. A. 8007.)

*Wheat screenings.*

WHEAT SCREENINGS—WHEAT—COMMERCIAL DESIGNATION.

An importation from Canada shown by the testimony to be commercially known as wheat screenings, and not as wheat, but 70 per cent of which consists of wheat, may be separated for duty purposes, the wheat portion being dutiable at 10 cents per bushel as wheat under the proviso to paragraph 644, tariff act of 1913, and the remaining portion, consisting of various kinds of seeds, at 10 per cent ad valorem as an unenumerated unmanufactured article under paragraph 385.

United States General Appraisers, New York, December 27, 1916.

In the matter of protests 796591, etc., of C. H. Williamson against the assessment of duty by the collector of customs at the port of Buffalo.

[Reversed in part; affirmed in part.]

*Gerry & Wakefield* (*Edwin R. Wakefield* of counsel) for the importer.

*Bert Hanson*, Assistant Attorney General (*Samuel Isenschmid*, special attorney), for the United States.

Before Board 3 (WAITE, HAY, and SULLIVAN, General Appraisers; HAY, G. A., not participating).

WAITE, *General Appraiser:* The importations in question have been entered as "wheat screenings scalpings" and "wheat scalpings screen-

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ings." Duty was assessed at 10 cents per bushel under paragraph 644, tariff act of 1913, which reads as follows:

644. Wheat, wheat flour, semolina, and other wheat products, not specially provided for in this section: *Provided*, That wheat shall be subject to a duty of 10 cents per bushel, that wheat flour shall be subject to a duty of 45 cents per barrel of 196 pounds, and semolina and other products of wheat, not specially provided for in this section, 10 per centum ad valorem, when imported directly or indirectly from a country, dependency, or other subdivision of government which imposes a duty on wheat or wheat flour or semolina imported from the United States.

Paragraph 644, while found in the free list, has a proviso, as will be noted, that wheat, wheat flour, and products of wheat shall pay a duty if imported from a country which levies a duty upon such articles imported from the United States. T. D. 33940 recites that Canada, the country from which these importations came, levies a duty upon such articles. No question was raised at the hearing upon that point. We therefore assume that the commodity in this case is dutiable, and we treat the same as though the paragraph providing for it was not in the free list.

Protestants claim the importations should have been assessed at 10 per cent ad valorem under the provision in paragraph 385 for unenumerated unmanufactured articles. Protests 798475/6 make the additional claim for assessment at 10 per cent ad valorem as a product of wheat under paragraph 644, above quoted.

A sample of the commodity was introduced in evidence. An inspection of the same makes it clear that the preponderating part of it is wheat. It is true that some of it is shrunken wheat, some broken wheat, and some full kernel. The sample also contains oats, barley, corn, linseed, wild buckwheat, and another small seed probably wild mustard, and possibly some cockle seed, with other foreign substances. A separation was made by the Government chemist and his report, which was placed in evidence, shows that of the three lots (one sample from each of the three importations), one contained 69.388 per cent of wheat, one 62.180 per cent of wheat, and one 71.145 per cent of wheat. He reports oats on an average of about 13 per cent; linseed, 1 per cent; oleaginous seed other than linseed, about one-third of 1 per cent; nonoleaginous seed, dust, etc., about 14½ per cent in two of the lots and nearly 23 per cent in a third. By reason of the large proportion of wheat, these importations would naturally and inevitably, it seems to us, be classified as wheat, notwithstanding the presence of other commodities and many impurities. Without doubt such would be the case were the importations reduced to the wheat material found therein.

Similar commodities have been passed upon by the board and the court. In Abstract 36236 (T. D. 34677) merchandise known as barley screenings was held to be dutiable as barley, the board following a previous decision to the same effect, Abstract 34075 (T. D. 33872).

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Abstract 36236 was appealed, but the appeal was dismissed by stipulation (6 Ct. Cust. Appls., 565, T. D. 35253).

In the case of Schade & Co. *v.* United States (5 Ct. Cust. Appls., 465; T. D. 35002), the merchandise was frozen wheat, and the court, referring to the term "wheat," used the following language:

> The term is used in the tariff law without limitation, and therefore the court is bound to hold included therewithin for dutiable classification in the absence of an established trade usage every kind and description of wheat. It is a general term, and the rule long established in tariff interpretation is that where a general term is used in the law without qualification it must, in the absence of a contrary commercial custom, be applied in its broadest significance, including every kind and class of merchandise properly referable thereto, either directly or as a species the genus of which is embraced within the particular tariff nomenclature.

Note also Atwood-Stone Co. *v.* United States (5 Ct. Cust. Appls., 472; T. D. 35004).

In the case at bar the importer has interposed the claim that by commercial designation the commodity is excluded from classification as wheat. We think the testimony clearly shows that merchandise like this, in the trade and commerce of the United States, is not known or handled, either bought or sold, as wheat. It is known as screenings. Wheat screenings, or any other kind of screenings, are not mentioned specifically in the tariff act. Wheat screenings, as we understand the expression, would be such things as are screened out of wheat. It might consist entirely of foreign substances, or it might be made up entirely of the small or shrunken grains of wheat. To know, however, that it is screenings gives us no assistance in the classification. Not being shown to be any commodity specifically mentioned in the tariff, we are left to determine how it shall be classified. Approaching, then, the question from the standpoint that this is an article not specifically enumerated in the statute, we might say that it is an unenumerated unmanufactured article under paragraph 385, a crude vegetable substance under paragraph 552, or classifiable by similitude if there is any enumerated article to which it bears sufficient resemblance in material, quality, texture, or use.

We think the claim of the importer that the merchandise is dutiable under paragraph 644 as a product of wheat is entirely untenable. It is not a product of wheat. It is a natural product and appears before us for classification as it was grown. It is not made out of wheat nor any other substance. That claim of the importer is therefore overruled.

The merchandise might possibly be classified as a crude vegetable substance were it not for the question which might arise under the paragraph providing for such substances, which reads:

> 552. Moss, seaweeds, and vegetable substances, crude or unmanufactured, not otherwise specially provided for in this section.



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In construing this paragraph the rule of *ejusdem generis* is invoked and the claim made that only such vegetable substances as resemble moss and seaweed are classifiable under that paragraph. Considerable latitude, however, is given in determining what does and what does not resemble moss and seaweed. Note Reed & Keller *v.* United States (5 Ct. Cust. Appls., 95; T. D. 34133). Claim under that paragraph has not been made, however, and we do not decide whether the merchandise, or any part of it, would come under this provision.

We are of the opinion that the commodity as imported should be dealt with in this case without reference to the wheat paragraph. If it were, there would be no hesitancy, in our opinion, in saying that it is a mixture of wheat and something besides. It must be conceded that from 60 per cent to 70 per cent of the importation is wheat, and this preponderance of wheat would characterize the whole commodity, if not separated. The importer would have a right to separate the wheat from the foreign substances and ask for assessment of duty accordingly. He has not done so, but the Government has produced evidence which furnishes a basis for separation, and under the rule heretofore recognized we think the separation may be made. We therefore find that a duty of 10 cents per bushel should be assessed on 69.388 per cent of the importation in protest 796591, 62.18 per cent of the importation in protest 798475, and 71.156 per cent of the importation in protest 798476. The remaining portion should be assessed as an uneneumerted unmanufactured article under paragraph 385. The protests are therefore overruled as to the wheat shown by the report of the chemist to be in the importations, and sustained, as above stated, as to the remainder of the importations. Reliquidation will be made accordingly.

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## *Abstracts of decisions of the Board of General Appraisers.*

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*Board 1*—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

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BEFORE BOARD 1, DECEMBER 22, 1916.

**No. 40507.**—Protest 804606 of F. H. Shallus (Baltimore).

STRAW RUGS.—Straw rugs classified at 25 per cent ad valorem under paragraph 368, tariff act of 1913, are claimed dutiable at 2½ cents per square yard under paragraph 272, or at 10 or 15 per cent under paragraphs 385 and 386.

Opinion by McClelland, G. A. Protest unsupported; overruled.

**No. 40508.**—Protest 789037 of Fensterer & Ruhe (New York).

CHANDELIERS—GLASS AND METAL ARTICLES—ENTIRETIES.

SULLIVAN, *General Appraiser:* The merchandise consists of chandeliers, electroliers, ceiling lights, and brackets, composed of metal and cut glass, the latter chief value.

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It was classified by the collector as articles composed wholly or in chief value of blown glass under paragraph 84 of the tariff act of 1913, and assessed with duty as such at 45 per cent ad valorem.

The importers' contention may be summed up in the following statement made by counsel at the hearing:

> The importers claim that the metal parts and the glassware are two distinct entities, and that they should be classified as though separately imported; that is to say, we claim that the metal parts are dutiable as manufactures of metal under paragraph 167 at the rate of 20 per cent, and the glass parts as assessed.

It is apparent from this statement that although several other claims are made in the protest, the claim under the metal paragraph is the one relied on.

The facts establish the following:

(1) That the chandeliers are not complete for instant use, but the metal frames must have attached thereto the glass pendants, beads, sockets, globes, bulbs, and wires. The metal frame is surrounded by glass beads hung from the top down the side of the frame or from the base. When the parts are placed together the chandelier or electrolier is complete. The parts are packed separately, and assembled by the purchaser. They are sold in the condition as imported, the packages very often being shipped direct from the dock to the manufacturers. The complete chandelier was not imported, wires, sockets, and other parts being lacking.

(2) They have always been classified as entireties, and while each part is packed separately this in no way alters the fact, for the reason that although packed separately each part is made to be used in connection with the other in making a complete chandelier or electrolier and is useless for any other purpose, and we can not better epitomize our conclusion than by quoting from the opinion of the Court of Customs Appeals in Jackson *v.* United States (2 Ct. Cust. Appls., 475; T. D. 32227):

> The fact that these linings as imported are not assembled into the form of their ultimate use does not deprive them of their character of entireties, and neither does it require that the parts into which the entirety has been temporarily resolved should be considered for tariff purposes as separate entities. "Knocked down" or assembled the castings, which were imported together, constituted mantel and fireplace linings, and for nothing else were they commercially fit or available. They were therefore, in our opinion, dutiable as entireties under the well-settled rule laid down by the courts. United States *v.* Auto Import Co. (168 Fed., 242); Park & Tilford *v.* United States (1 Ct. Cust. Appls., 34; T. D. 31006); Knauth *v.* United States (1 Ct. Cust. Appls., 422; T. D. 31499); Isaacs *v.* Jonas (148 U. S., 648, 653, 654); United States *v.* Isaacs (148 U. S., 654, 656).

In the present case the component material of chief value is shown to be blown glass. The classification of the collector was therefore correct. His decision is affirmed, and the protest dismissed.

**No. 40509.**—Protest 807303 of Mihalovitch Bros. Co. (Cleveland).

BOTTLES.

SULLIVAN, *General Appraiser:* The official samples show that the merchandise consists of small glass bottles 2 inches long and five-eighths of an inch in diameter at the largest point, each having a glass stopper, which when inserted in the bottle adds about half an inch to the length of the entirety. The neck of the bottle is round with the usual flaring lip, and the body hexagonal in shape. The glass stopper is 2½ inches long, about 1¾ inches of it being intended to insert into the bottle, partially to close the bottle and partially to form a dropper by which the contents can be removed drop by drop as required. The portion of the stopper intended to close the bottle is round and tapering, and has been ground, as has the inside of the neck of the bottle, in order that the stopper may fit more closely in the neck. The dropping portion of the stopper is thinner than the rest, and is tapering. The upper part of the stopper, or the portion outside the bottle, is hexagonal in shape, and faceted on top. The whole forms a very ornamental and neat article.

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The collector classified this merchandise under paragraph 84 of the tariff act of 1913, which so far as pertinent reads: * * *.

The protestants claim the bottles dutiable under paragraph 83. * * *

In addition there is a claim that the merchandise is dutiable under paragraph 95 as manufactures of glass, not specially provided for, at 30 per cent ad valorem, which need not be considered.

There is also a claim for a discount of 5 per cent on duties under section 4, paragraph J, subsection 7. In view of the fact that protestants made no mention of this claim at the hearing we consider it abandoned, and overrule it.

At the trial protestants moved to incorporate the record in protest 780294, and there being no objection on behalf of the United States, the motion was granted.

The testimony of protestants' witness was to the effect that these bottles are used "for the purpose of holding nonalcoholic perfumery," as containers, and that they are sold and used for that purpose altogether. The witness stated that the particular perfume to be contained in these bottles was very highly concentrated, "only a small drop is equal to a dram of other perfumes, and for the purpose of using that drop the bottle contains an elongated stopper. If the bottles did not contain that elongated stopper, the average person would take too much." He further testified that its purpose was to avoid waste of the perfume, and that the bottles were not cut or ground, "except for the grinding on the fitted stopper."

It will be observed that paragraph 83 covers plain bottles, and as such, we think, was intended by Congress to provide for the plain, ordinary containers of merchandise, which have no other use than as containers. These bottles have a feature apart from their use as containers of perfume, viz, the dropping portion. Furthermore, a mere inspection of the samples shows that they are very ornamental, not at all plain, but having a very fancy appearance. We believe that paragraph 84 more properly classifies the merchandise than paragraph 83, and so hold. (See In re protest 660312, of Surgical Supply Importing Co., Abstract 37410.)

The protest is overruled, and the decision of the collector affirmed.

DISSENTING OPINION.

BROWN, *General Appraiser:* I am unable to concur, because these bottles do not seem to me to be ornamental, and the testimony on the consolidated record (protest 780294 having been incorporated at the trial) shows that they are ordinary holders for perfume. In these circumstances, I do not think the dropping attachment to the stopper causes this bottle to be used as an appliance or implement in chemical or other operations within the meaning of that clause in paragraph 83, but that on the contrary it is similar to the bottle held to be without that language in the case of Surgical Supply Importing Co., G. A. 7292 (T. D. 31969; 21 Treas. Dec., 422).

**No. 40510.**—Protests 803887–59267, etc., of Marshall Field & Co. (Chicago).

IMITATION PEARL BEAD STRINGS.

SULLIVAN, *General Appraiser:* According to the evidence of the single witness testifying on behalf of the protestants, the merchandise in this case consists of imitation pearl beads strung on cotton strings, the aggregate length of the beads being forty centimeters; the beads in some instances being of one size, and in others, of graduated sizes, the larger in the middle and being gradually reduced to the smaller sizes at each end. The witness also testified that these articles were similar to the merchandise which was the subject of Abstract 39579. On cross-examination, however, he testified that some of the beads in this case were of better quality than those in the cited case, and some were more heavily filled with wax; also that the strings in that case were lighter than the strings in the case at bar. He stated that these articles were principally used for making necklaces, but were not adapted for use as necklaces in their present condition, being temporarily strung. In answer to the question on cross-examination, "How do the beads appear on the string, graduated exactly in the

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condition they will be in the finished necklace?" he said, "In the strings where the beads are graduated it is my understanding that they are used in exactly the same form in which they come."

We have no other proof in this case, nor samples of the merchandise.

These strings of pearl beads were assessed with duty at 60 per cent ad valorem under paragraph 356 of the tariff act of 1913 *as parts of jewelry*. The protests claim them dutiable under paragraph 333 at 35 or 50 per cent ad valorem. That paragraph reads as follows:

333. Beads and spangles of all kinds, including imitation pearl beads, not threaded or strung, or strung loosely on thread for facility in transportation only, 35 per centum ad valorem; curtains, and other articles not embroidered nor appliquéd and not specially provided for in this section, composed wholly or in chief value of beads or spangles made of glass or paste, gelatin, metal, or other material, 50 per centum ad valorem.

The portion of the jewelry paragraph under which this merchandise was classified and assessed with duty reads as follows:

356. Jewelry, commonly or commercially so known, valued above 20 cents per dozen pieces, 60 per centum ad valorem; * * *.

It will be seen at a glance that there is no provision there for parts of jewelry. Following that clause are provisions for chains, valued above 30 cents per yard, and for articles valued above 20 cents per dozen pieces, such as those enumerated, and like articles thereto, and in the fourth clause the words "all the foregoing and parts thereof"; but the Court of Customs Appeals in the Mamluck case (6 Ct. Cust. Appls., 556; T. D. 36198) has held that the words "parts thereof" in the fourth clause do not refer to "jewelry" in the first. The only provision for parts of jewelry is in the last clause of the paragraph which places a duty of 50 per cent ad valorem on "materials of *metal*, * * * finished or partly finished, * * * suitable for use in the manufacture of any of the foregoing articles in this paragraph," viz, "jewelry * * * valued above 20 cents per dozen pieces," in the first clause thereof. But inasmuch as this merchandise is not composed of metal it is clearly not within the last clause of this paragraph. It is unfinished, and therefore equally excluded from the first. Nor is it within the remaining portions of the paragraph, for the reason that it is not enumerated, nor like any of the articles named therein. It is therefore not dutiable under paragraph 356.

To bring these strings of imitation pearl beads within the first part of paragraph 333, and dutiable thereunder at 35 per cent ad valorem, they must be either "not threaded or strung, or strung loosely on thread for facility in transportation only." We have proof that the beads are temporarily strung, but we do not think the proof adequately shows that they are strung *loosely* on thread *for facility in transportation only*. It is true that the witness testified that they were *similar* to the merchandise which was the subject of Abstract 39579, but he admitted not only that some of the beads were better quality but that the strings in that case were lighter than these, and ended his testimony by saying, "In the strings where the beads are graduated it is my understanding that they are used in exactly the same form in which they come."

In Abstract 39579, supra (In re Spaulding & Co., protest 793486), we held certain strings of graduated imitation pearl beads dutiable at 35 per cent ad valorem under paragraph 333. In that case, however, the testimony showed that the beads were cut apart, sorted into necklaces, restrung, and clasps attached; and that they were put on strings at the time they were shipped from the other side, so that they could be handled more easily, *and for convenience in transportation*. We have no such evidence here, as a mere reading will show that the graduated beads, at least, are strung for convenience in restringing and that the strings are heavier, and therefore more permanent, than those in the cited case. In addition, some of the beads are better quality; so that from the testimony it is safe to assume there is a decided dis

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similarity between this merchandise and that in the case cited. Therefore we hold it is not dutiable under the first part of paragraph 333 at 35 per cent.

Having thus narrowed the issue, we have only to consider the remaining claim in the protest. Is this merchandise dutiable at 50 per cent ad valorem under the last part of paragraph 333?

We have previously held imitation pearl necklaces dutiable as jewelry. (In re protest 639596 of G. C. Heimerdinger & Co., Abstract 37522.) And the Court of Customs Appeals is apparently of this opinion, judging from the following quotation from its decision in American Bead Co. *v.* United States (7 Ct. Cust. Appls., —; T. D. 36259):

> (3) There are concededly beaded necklaces commonly regarded as jewelry (imitation or real), such as *pearl* or gold-beaded necklaces, or *imitations* thereof * * *.

We have also held articles similar to the unfinished necklaces in question dutiable as unfinished jewelry (In re protest 679162 of American Express Co., Abstract 36489). We are still of the same opinion, but inasmuch as there is no provision in paragraph 356 of the present act for unfinished jewelry composed of other materials than metal, in view of the Mamluck case, supra, we are precluded from classifying this merchandise under that paragraph. However, it is clearly an article "not embroidered nor appliquéd and not specially provided for in this section, composed wholly or in chief value of beads," and thus within the language of paragraph 333. We therefore hold this merchandise dutiable at 50 per cent ad valorem under that paragraph.

To this extent the protests are sustained and the decision of the collector reversed in each case.

**No. 40511.**—Protests 804602, etc., of F. B. Vandegrift & Co. (New York).

ECRANS—PHOTOGRAPHIC SCREENS.—Ecrans classified as optical instruments at 35 per cent ad valorem under paragraph 93, tariff act of 1913, are claimed dutiable as parts of photographic cameras at 15 per cent under paragraph 380.

Opinion by SULLIVAN, G. A. On the authority of Abstract 40173 ecrans were held dutiable as parts of cameras under paragraph 380.

**No. 40512.**—Protest 805453 of American Express Co. (New York).

ROSARIES—CRUCIFIXES.—Rosaries and crucifixes classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. Rosaries composed of steel and aluminum and crucifixes composed of iron and nickel were held dutiable as manufactures of metal under paragraph 167, tariff act of 1913. United States *v.* American Bead Co. (7 Ct. Cust. Appls., —; T. D. 36456) and Abstract 38674 followed.

**No. 40513.**—Protest 807714 of Abraham & Straus (New York).

READING GLASSES—MICROSCOPES—OPTICAL INSTRUMENTS.—Reading glasses and similar goods, classified as optical instruments at 35 per cent ad valorem under paragraph 93, tariff act of 1913, are claimed dutiable as microscopes at 25 per cent under paragraph 94.

Opinion by SULLIVAN, G. A. On the authority of Abstract 39668 the reading glasses and similar articles were held dutiable as microscopes under paragraph 94.

**No. 40514.**—Protests 807979, etc., of F. Pustet & Co. et al. (New York).

ROSARIES.—The question here is whether rosaries are dutiable as jewelry at 60 per cent ad valorem under paragraph 356, or as manufactures of metal under paragraph 167, tariff act of 1913.

Opinion by SULLIVAN, G. A. Upon stipulation of counsel certain rosaries were held dutiable under the provisions of paragraph 167. G. A. 7975 (T. D. 36763) followed.

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BEFORE BOARD 2, DECEMBER 22, 1916.

**No. 40515.**—Protest 801338 of Scheuer & Co. (New York).

LANTERNS.—Lanterns composed of paper, wood, and other material, classified as manufactures in chief value of paper at 25 per cent ad valorem under paragraph 332, tariff act of 1913, are claimed dutiable as manufactures of wood at 15 per cent under paragraph 176.

Opinion by FISCHER, G. A. It was found that the component material of chief value in the lanterns is wood. They were held dutiable under paragraph 176. Abstract 39867 followed.

**No. 40516.**—Protests 793424, etc., of Thomas J. Wilbee (Buffalo).

SCRAP STEEL.—Scrap steel pipe, short lengths of rail, shafting rods, flues, etc., of iron or steel, classified either as waste not specially provided for at 10 per cent ad valorem under paragraph 384, tariff act of 1913, or as iron or steel pipe at 20 per cent under paragraph 127, are claimed entitled to free entry as iron or steel scrap fit only to be remanufactured under paragraph 518.

Opinion by FISCHER, G. A. It was found that some of the pipe has numerous holes, bent ridges, split seams, and from 60 to 70 per cent is in pieces under 4 feet long, that it is dealt in solely as scrap. The lengths of rail, shafting, rods, flues, etc., were found to be so short as to totally unfit them for any other use save remanufacture. The merchandise, except one item of scrap steel pipe, was held free of duty under paragraph 518.

**No. 40517.**—Protest 796164 of Perry, Ryer & Co. (New York).

WOVEN FLAX FABRICS.—Merchandise classified as manufactures of flax at 35 per cent ad valorem under paragraph 284, tariff act of 1913, is claimed dutiable at 30 per cent under paragraph 283.

Opinion by COOPER, G. A. From the appraiser's report it was found that the merchandise is plain woven flax fabrics. It was held dutiable at 30 per cent under paragraph 283, as claimed. Protest sustained in part.

**No. 40518.**—Protest 791426 of Syndicate Trading Co. (New York).

JACQUARD FIGURED UPHOLSTERY GOODS.—Jacquard figured cotton velvet table covers and panels classified as cotton velvet articles at 40 per cent ad valorem under paragraph 257, tariff act of 1913, are claimed dutiable at 30 or 35 per cent under paragraph 258. Pile fabrics known as velours, classified at 40 per cent under paragraph 280, and cushions and table covers composed of silk chief value, classified at 45 per cent under paragraph 318, are claimed dutiable at various lower rates.

Opinion by COOPER, G. A. On the authority of Downing *v.* United States (6 Ct. Cust. Appls., 447; T. D. 35984) the cotton velvet table covers and panels were held dutiable at 35 per cent under paragraph 258. Protest overruled as to all other items.

**No. 40519.**—Protest 788372 of Johannes Meyer (New York).

JACQUARD FIGURED UPHOLSTERY GOODS—COUCH COVERS.—Merchandise classified as pile fabrics at 40 per cent ad valorem under paragraphs 257, 280, or 288, is claimed dutiable as Jacquard figured upholstery goods at 35 per cent under paragraph 258.

Opinion by COOPER, G. A. On the authority of Downing *v.* United States (6 Ct. Cust. Appls., 447; T. D. 35984) the couch covers were held dutiable as Jacquard figured upholstery goods under paragraph 258, as claimed. Protest sustained in part.

**No. 40520.**—Protest 787767 of Dezell & Helwig (New York).

TOWELS—TABLE DAMASK—COTTON CLOTH.—Damask table cloths, towels, toweling, and sofa and couch covers, classified under paragraph 258, tariff act of 1913, are claimed dutiable under paragraphs 252, 263, 264, or 258.

Opinion by COOPER, G. A. The cotton table damask was held dutiable at 25 per cent under paragraph 263. G. A. 7630 (T. D. 34903) followed. Cotton toweling was

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held dutiable as cotton cloth under paragraph 252. G. A. 7618 (T. D. 34858) followed. Towels in chief value of cotton were held dutiable at 25 per cent under paragraph 264. G. A. 7609 (T. D. 34819) followed. On the authority of Downing *v.* United States (6 Ct. Cust. Appls., 447; T. D. 35984) protest overruled as to Jacquard figured sofa and couch covers classified under paragraph 258.

**No. 40521.**—Protests 765722, etc., of Tice & Lynch (New York).

FIGURED COTTON CLOTH.—Merchandise classified as Jacquard figured manufactures of cotton at 30 per cent ad valorem under paragraph 258, tariff act of 1913, is claimed dutiable as figured cotton cloth under paragraph 252.

Opinion by COOPER, G. A. On the authority of G. A. 7618 (T. D. 34858), affirmed in United States *v.* Sherman (6 Ct. Cust. Appls., 271; T. D. 35501), the merchandise in question was held dutiable as figured cotton cloth under paragraph 252.

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BEFORE BOARD 2, DECEMBER 27, 1916.

**No. 40522.**—Protest 800840 of A. & H. Veith (New York).

BEADED ARTICLES—SUFFICIENCY OF PROTEST.—The importers in this case failed to specify the rate of duty against which the protest was lodged. The merchandise in question consists of ornaments composed in chief value of beads, classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913.

Opinion by HOWELL, G. A. On the authority of Dieckerhoff *v.* United States (4 Ct. Cust. Appls., 230; T. D. 33440) the protest was held sufficient. Upon the report of the appraiser the ornaments composed in chief value of beads were held properly dutiable at 50 per cent under paragraph 333. Protest sustained in part. Loewenthal *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464) followed.

**No. 40523.**—Protests 806016, etc., of Muser Bros. et al. (New York).

BEADED TRIMMINGS—EMBROIDERED ARTICLES IN CHIEF VALUE OF GLASS BEADS—GELATIN SPANGLES.—Trimmings and other articles classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable at 50 per cent under paragraph 333.

Opinion by HOWELL, G. A. On the authority of Loewenthal *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464) some of the merchandise which was found to be composed in chief value of beads or spangles was held dutiable at 50 per cent under paragraph 333, as claimed. Certain silk embroideries were found to be ornamented either with glass or paste beads or gelatin spangles, the beads or spangles being the component material of chief value. Those in chief value of glass or paste beads were held dutiable at 30 per cent under paragraph 95, and those in chief value of gelatin spangles at 25 per cent under paragraph 34. G. A. 7897 (T. D. 36362) followed.

**No. 40524.**—Protests 759212, etc., of Andrew R. Steven (New York).

COTTON CLOTH.—Jacquard figured cotton cloth classified at 30 per cent ad valorem under paragraph 258, tariff act of 1913, is claimed dutiable at the appropriate rate according to the average number of the yarn under paragraph 252.

Opinion by COOPER, G. A. Protests sustained. G. A. 7618 (T. D. 34858), affirmed in United States *v.* Sherman (6 Ct. Cust. Appls., 271; T. D. 35501), followed.

**No. 40525.**—Protest 794285 of Eaton, Schleich & Woll (New York).

VEGETABLE FIBER—AFRICAN BASSINE.—Certain vegetable fiber classified as Tampico, by similitude, at 20 per cent ad valorem under paragraph 285, tariff act of 1913, is claimed dutiable at 15 per cent under paragraph 385.

Opinion by COOPER, G. A. The report of the appraiser shows that the African bassine is of the same character as that passed upon in United States *v.* Osborn (6 Ct. Cust. Appls., 276; T. D. 35504). Following that decision and Cone *v.* United States (6 Ct. Cust. Appls., 263; T. D. 35477) said merchandise was held dutiable at 15 per cent under paragraph 385. Protest sustained in part.

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## (T. D. 36899—G. A. 8008.)

### *Bath mats made of cotton chenille.*

1. MANUFACTURES OF COTTON CHENILLE.

Bath mats made of cotton chenille are more specifically provided for as "all articles manufactured of cotton chenille" in paragraph 258, act of 1913, than as "bath mats * * * made of cotton" in paragraph 264.

2. CONSTRUCTION.

A general provision prevails over an *eo nomine* one if Congress so intended.

3. CONSTRUCTION.

Congress, having reenacted in paragraph 258 the provision for "all articles manufactured of cotton chenille," adopted the construction put upon that term by the courts under the prior tariff acts.

United States General Appraisers, New York, December 29, 1916.

In the matter of protest 795666 of E. Wedemann against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

*Strauss & Hedges* (*Jacob L. Klingaman* of counsel) for the importer.

*Bert Hanson*, Assistant Attorney General (*Martin T. Baldwin*, special attorney, of counsel), for the United States.

Before Board 2 (FISCHER, HOWELL, and COOPER, General Appraisers; HOWELL, G. A., not participating).

COOPER, *General Appraiser:* The merchandise covered by this protest consists of bath mats made of cotton chenille. It was classified as articles of cotton chenille by the collector of the port who levied duty at the rate of 35 per cent ad valorem imposed by paragraph 258 of the tariff act of 1913. Against this classification the importer duly and seasonably protested. There are several claims named in the protest, but the only one of serious merit is that which challenges this action of the collector upon the ground that the merchandise is bath mats composed of cotton and properly dutiable at the rate of 25 per cent ad valorem under paragraph 264. The pertinent parts of the paragraphs in question read as follows:

258. Curtains, table covers, and all articles manufactured of cotton chenille, or of which cotton chenille is the component material of chief value * * *.

264. Towels, bath mats, quilts, blankets, * * * any of the foregoing made of cotton, or of which cotton is the component material of chief value, not embroidered nor in part of lace and not otherwise provided for * * *.

The facts are undisputed. The testimony shows that the articles are bath mats made of cotton chenille and that they are not embroidered nor in part of lace. The question involved is purely a question of law, namely, which of the two provisions is the more specific or more aptly and exactly describes the articles in question? Did Congress intend that goods such as we have before us should be classified as "all articles manufactured of cotton chenille," or was it the intention to include them in the provision for "bath mats * * * made of cotton"?

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Paragraph 258 covers articles manufactured from a particular kind of material (cotton chenille), while paragraph 264 covers things made of cotton. Cotton chenille is unquestionably included within the class of cotton, and, as to material, paragraph 258 is the more specific. On the other hand, paragraph 264 contains the *eo nomine* provision for "bath mats," which is a narrower term than the provision for "all articles" used in paragraph 258. Thus paragraph 258 is more specific as to material, while paragraph 264 is more specific as to subject matter.

It is not in every case that an *eo nomine* provision prevails over one of general description. The congressional intent controls. Roger & Gallet *v.* United States (7 Ct. Cust. Appls., —; T. D. 36424); Rosenberg & Co. *v.* United States (7 Ct. Cust. Appls., —; T. D. 36510). In Koch *v.* Seeberger (30 Fed., 424), the court said:

> I do not think that a name should be the sole guide to classify imported goods for duty.

In United States *v.* Wolff (5 Ct. Cust. Appls., 418; T. D. 34943) Judge De Vries, speaking for the court, said:

> That construction of a tariff statute which will render duties uniform upon uniform classes and kinds of goods is greatly to be desired must be assumed to have been the congressional purpose and should not be denied save for cogent and clearly convincing reasons.

The bath mats in question belong to the class of goods made from cotton chenille and under the construction above enunciated should fall within paragraph 258 in classification for duty. But, as the relative specificness of the two provisions under consideration is very close, it may be well to ascertain, if possible, the intent of the law-making body.

It is a familiar rule that if a statute is reenacted it takes the established judicial construction of that provision. The provision for manufactures of cotton chenille first appeared in the tariff act of 1890 and has been continued in each succeeding tariff act to the present time. Under the tariff act of 1890, wearing apparel made of cotton chenille was held to be more specifically provided for as "all goods manufactured of cotton chenille" than as "cotton wearing apparel." *In re* Oppenheimer, G. A. 1311 (T. D. 12662), affirmed in Oppenheimer *v.* United States (66 Fed., 740; 71 Fed., 869). While "cotton wearing apparel" is a broader term than "bath mats," it is a specific provision referring to a restricted class of goods, but the courts held that the provision "all goods manufactured of cotton chenille" was the more specific. In the act of 1897 Congress made a slight change in the wording of the provision, making it "all articles manufactured of cotton chenille," which is identical with the language used in the present act. This slight change in the language used made no difference in the meaning or scope of the provision, and, by reenacting the same provision in the successive tariff acts,

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under the rule of judicial decisions and long-continued administrative practice, it must be assumed that Congress adopted the construction which had been placed upon that provision by the courts, and that, accordingly, it considered the provision reenacted was so specific as to include all articles made of cotton chenille.

The provision for bath mats, now under consideration, is the first congressional recognition of that kind of merchandise, and, while the term covers a well-defined type of articles, there are many varieties and kinds of cotton bath mats other than those made from cotton chenille, as shown by the board decisions in the case of Witcombe, McGeachin & Co. (Abstract 37163) and in Knauth, Nachod & Kuhne, G. A. 7748 (T. D. 35577), and it therefore can not be urged that the exclusion of bath mats made of cotton chenille from paragraph 264 will leave nothing for that provision to operate upon. It is also pertinent to note that the provisions in paragraph 264 are qualified by the expression "not otherwise provided for" while those of paragraph 258 are not so limited.

Upon the reasons and authorities above given, the articles in question are held to be more specifically provided for under paragraph 258 than under paragraph 264.

The protest is overruled.

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## *Abstracts of decisions of the Board of General Appraisers.*

*Board 1*—McClelland, Sullivan, and Brown. *Board 2*—Fischer, Howell, and Cooper. *Board 3*—Waite, ———, and Hay.

BEFORE BOARD 1, DECEMBER 29, 1916.

**No. 40526.**—Protest 805882-59714 of Sears, Roebuck & Co. (Chicago).

AMBER BEADS.

Merchandise stated by the examiner to be real amber beads, without clasps, strung on yellow cotton cords and graduated as to size, was classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913. Several claims are made at lower rates under paragraphs 367 and 333.

Opinion by SULLIVAN, G. A. No testimony being introduced to sustain any of the allegations of the protest it was overruled.

**No. 40527.**—Protests 804297-59509, etc., of Sears, Roebuck & Co. (Chicago).

JEW'S-HARPS—MUSICAL INSTRUMENTS—TOYS.

SULLIVAN, *General Appraiser*: The merchandise in these cases consists of so-called jew's-harps, assessed with duty at 35 per cent ad valorem under paragraph 342 of the tariff act of 1913, and classified by the collector as toys. In the protests the claim is made that the merchandise is dutiable under paragraph 167 as manufactures of metal at 20 per cent ad valorem.

At the hearing in Chicago this situation arose: When the case was called for trial the importer submitted on the official sample and asked for 30 days for memorandum; the Government asked for a hearing, and introduced as a witness the examiner who had originally classified the merchandise.

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From the interrogatories propounded it would appear the Government was not satisfied with the classification by the collector as toys, but desired the merchandise classified as musical instruments, and introduced, without objection, catalogues of a number of jobbing houses in which jew's-harps were listed under the heading of musical instruments.

The following was brought out during the cross-examination of the examiner by protestants' counsel:

Q. You have testified that jew's-harps are musical instruments and that these catalogues contain nothing but musical instruments; where did you get your experience and information in regard to musical instruments?—A. I have *not* testified that they are musical instruments.

Q. You said that these catalogues contained nothing but musical instruments?—A. I said accessories, articles pertaining to that line.

If we were inclined to sustain the proposition that a jew's-harp is a musical instrument, upon which, however, we do not pass, the oral testimony of this witness would not sustain such finding. The catalogues would not of themselves prove that jew's-harps were musical instruments; but on this question we do not pass any opinion. The merchandise was classified by the collector as toys. That fact is undisputed by the importers.

It would appear that jew's-harps have been classified as toys, and that there is authority for the present classification in the board's decision under the law of 1897 In re protests 20882f, etc., of F. A. O. Schwarz et al., G. A. 4679 (T. D. 22096). Indeed, other authorities may be cited sustaining the present classification under the act of 1897. It will be observed, however, that all decisions on this question were prior to the decision of the Court of Customs Appeals in the Illfelder case (1 Ct. Cust. Appls., 109-111; T. D. 31115), wherein the court defined a toy.

The fact that these jew's-harps were classified as toys, which is undisputed by the importers, is sufficient to sustain the action of the collector.

We can not sustain the protest, nor can we under the testimony classify the merchandise as musical instruments, even though it may be such in fact. Under the well-recognized rule as to the presumption of correctness attaching to the action of public officers, we sustain the classification, and overrule the protests.

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BEFORE BOARD 2, DECEMBER 29, 1916.

**No. 40528.**—Protest 793488-58143 of Takito, Ogawa & Co. (Chicago), protests 788921, etc., of Butler Bros. (New York and St. Louis), protest 806995 of Butler Bros. (St. Paul), and protest 805842 of J. T. Steeb & Co. (Seattle).

LANTERNS, PARASOLS, AND UMBRELLAS COMPOSED OF PAPER AND WOOD.—Lanterns, parasols, and umbrellas, classified as manufactures in chief value of paper at 25 per cent ad valorem under paragraph 332, tariff act of 1913, are claimed dutiable as manufactures of wood at 15 per cent under paragraph 176.

Opinions by FISCHER, G. A. Certain of the lanterns and parasols were found to be composed in chief value of wood and held dutiable accordingly under paragraph 176, as claimed. Protests sustained in part.

**No. 40529.**—Protests 765455, etc., of Pierson-Schade Forwarding Co. et al. (St. Louis).

TEXTBOOKS.—Certain books entitled "The Catholic Bible," "A Practical Commentary on Holy Scripture," and Otto Bardenhewer's "Patrology," classified as books at 15 per cent ad valorem under paragraph 329, tariff act of 1913, are claimed entitled to free entry as "textbooks used in schools and other educational institutions" under paragraph 426.

Opinion by FISCHER, G. A. The books in question were held free of duty as textbooks. Protests sustained in part.

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**No. 40530.**—Protest 806961 of Loomis Scrap Iron Co. (Detroit).

IRON PIPE, SEAMED—SCRAP IRON.—The merchandise in question is iron pipe. The entire importation was classified as seamed iron pipe at 20 per cent ad valorem under paragraph 127, tariff act of 1913. A portion of the merchandise is claimed entitled to free entry under paragraph 518 as scrap iron fit only to be remanufactured.

Opinion by FISCHER, G. A. Protest overruled, the record failing to show what quantity, if any, is fit only for remanufacture.

**No. 40531.**—Protest 805607 of American Bronze Co. (Buffalo).

ALUMINUM ARTICLES FOR ELECTRIC WIRING.—Protest 805607 of American Bronze Co. (Buffalo).

Certain articles composed of aluminum and intended for use in connection with electric wiring, classified as manufactures of metal at 20 per cent ad valorem under paragraph 167, tariff act of 1913, are claimed dutiable as aluminum scrap at 2 cents per pound under paragraph 143.

Opinion by FISCHER, G. A. The claim is made on the ground that the articles, although fully completed and composed wholly of new aluminum, are not in dimensions fully up to specification and consequently are not suitable for the particular purpose for which they were originally designed. Protest overruled, this statement being absolutely refuted by a mere examination of the samples in evidence. G. A. 6594 (T. D. 28175) cited.

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BEFORE BOARD 3, DECEMBER 29, 1916.

**No. 40532.**—Protests 793631, etc., of Mente & Co. (New York).

JUTE SUGAR BAGS—WASTE—PAPER STOCK.—Merchandise invoiced as old jute bagging waste and crude paper stock and reported by the appraiser to be old sugar bags made of twilled jute fabrics, with a colored stripe running through the center, and exceeding 16 threads to the square inch, to be used for patching purposes, was classified as waste not specially provided for at 10 per cent ad valorem under paragraph 384, tariff act of 1913. It is claimed free of duty under paragraph 408 or 566.

Opinion by WAITE, G. A. From the testimony it was found that 25 per cent of the merchandise is fit only for paper stock and to that extent the merchandise was held entitled to free entry under paragraph 566. Abstract 37584 noted.

**No. 40533.**—Protest 793871 of H. B. Thomas & Co. (San Francisco).

HOG LIVER—DANISH LIVER PASTE—PREPARED MEAT.—Merchandise invoiced as "Danish liver paste" and classified as a nonenumerated manufactured article under paragraph 385, tariff act of 1913, is claimed entitled to free entry under paragraph 545 as "meats of all kinds, prepared or preserved, not specially provided for."

Opinion by WAITE, G. A. The case was submitted on the record and analysis to be made by a Government chemist. The chemist found the merchandise to be composed of hog liver with 5 per cent of corn, with condiments, and it was therefore held entitled to free entry under paragraph 545, as claimed. Note G. A. 7887 (T. D. 36341).

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## (T. D. 36900.)

### *Entered value.*

VANDIVER *v.* UNITED STATES (No. 1718).

CONSTRUCTION, SUBSECTION I OF SECTION 3, TARIFF ACT OF 1913—ENTERED HIGHER THAN MARKET VALUE.

The addition by the importer of a certain sum to the invoice value, with a certificate to the effect that the addition was made to make market value as indicated by the appraiser's advance in similar cases and that his action was taken pursuant to

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subsection I of section 3, tariff act of 1913, was not a compliance with the subsection, since it required him to certify that the entered value was higher than the market value (which he did not do) and provided that his action should appear to be taken after due diligence and inquiry (which did not appear).

## United States Court of Customs Appeals, December 21, 1916

APPEAL from Board of United States General Appraisers, G. A. 7880 (T. D. 36280).

[Affirmed.]

*John L. Vandiver* for appellant.
*Bert Hanson*, Assistant Attorney General, for the United States.

[Oral argument October 18, 1916, by Mr. Vandiver and Mr. Hanson.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

The importer made entry at the port of Philadelphia of a consignment of toys in August, 1914, valued at $594. Assuming to act under the provisions of paragraph I of section 3 of the tariff act of 1913, the importer added to his entry a certificate as follows:

Importer adds 76 marks to make market value as indicated by appraiser's advance in similar cases now pending on appeal to reappraisement. This addition is made pursuant to subsection I of section 3, tariff act of October 5, 1913.

This was followed by an application to the Secretary of the Treasury for the assessment of duty at less than the entered value, which application was denied upon two grounds: First, because the action of the importer in making an advance merely because a previous advance had been made by the appraiser, and without inquiry on his part as to the true market value, was held not to constitute the good faith and diligence required by the statute; and, second, for the reason that the importer failed to certify in the certificate accompanying the entry that the entered value was higher than the market value, as required by the statute.

In other appeals involving a similar question, the entered value was determined to be the value exclusive of the addition made corresponding to the addition of 76 marks in the present case. The collector having, upon the refusal by the Secretary of the Treasury to make the certificate required by paragraph I of section 3, assessed duty at the entered value, the importer filed a protest claiming a reduction from the entered value of the addition of 76 marks made by him. On hearing before the Board of General Appraisers, the majority of the board held that the importer had not made out a case under this paragraph. General Appraiser Brown filed a dissenting opinion.

Other cases presenting similar questions are pending in this court for decision, but the present case may be disposed of without full discussion of all the questions involved. Indeed, all are not present

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in the instant case. We therefore confine ourselves to a decision of what we deem a controlling point in the present case.

For convenience we quote paragraph I of section 3:

> The duty shall not, however, be assessed in any case upon an amount less than the entered value, unless by direction of the Secretary of the Treasury in cases in which the importer certifies at the time of entry that the entered value is higher than the foreign market value and that the goods are so entered in order to meet advances by the appraiser in similar cases then pending on appeal for reappraisement, and the importer's contention shall subsequently be sustained by a final decision on reappraisement, and it shall appear that the action of the importer on entry was taken in good faith, after due diligence and inquiry on his part, and the Secretary of the Treasury shall accompany his directions with a statement of his conclusions and his reasons therefor.

This paragraph requires payment of duty upon the entered value in all cases except such as are provided for therein. It contemplates a direction by the Secretary of the Treasury in cases in which certain facts concur. Among these, first, is that the importer shall have certified at the time of the entry that the entered value is higher than the foreign market value and that the goods are so entered in order to meet advances by the appraisers in similar cases then pending on appeal for reappraisement; second, that it shall appear that the action of the importer on entry was taken in good faith after due diligence and inquiry on his part. The only attempt to comply with this provision is stated in the certificate above quoted. This certificate falls far short of containing a statement that the entered value is higher than the foreign market value. It does state that an addition is made "to make market value as indicated by appraiser's advance in similar cases now pending on appeal to reappraisement." But all this might be true when in the belief of the importer the actual market value is not less than that stated in the entry. The effect of this provision is to afford a statutory remedy to the importer to escape the penalties which would otherwise fall upon him for entering goods at less than full value, and to permit an entry, so that in case it should be held that the value is less than that actually entered he would get the benefit of the reduction from the entered value. But it was not the purpose to permit him to speculate upon the results of pending litigation except upon compliance with the requirement of the statute, and this, as its first requirement, states that the importer must have certified at the time of entry that the entered value is higher than the foreign market value. This he failed to do, unless the statement "this addition is made pursuant to subsection I of section 3, tariff act of October 5, 1913," be construed as tantamount to a statement that all the facts required by said paragraph exist. We think it not open to this construction. The most that can be said is that this advises the officer that he is assuming to proceed under this paragraph, but it is not intended to act as a

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substitute for the statement of a particular fact which is required by the terms of the paragraph to be set out. For this reason we think the Secretary of the Treasury was justified in withholding direction to the collector to liquidate at less than the entered value.

The decision of the board will be *affirmed.*

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(T. D. 36901).

*Tea sweepings.*

UNITED STATES *v.* MONSANTO CHEMICAL CO. *et al.* (No. 1673).

1. EVIDENCE.

A British tariff regulation, quoted and referred to in brief of counsel, but not offered or received in evidence, can not be considered as evidence.

2. DENATURED TEA SWEEPINGS—SEGREGATION—EVIDENCE—PRESUMPTION IN FAVOR OF COLLECTOR'S CLASSIFICATION.

The presumption of correctness attaching to the collector's classification of denatured tea sweepings (a mixture of tea sweepings, lime, and asafetida) as an entirety (tea sweepings) under paragraph 13, tariff act of 1913, is not overcome by a claim that the lime content is dutiable separately, unless it be shown that the lime and tea sweepings have each maintained their identity in the mixture, and unless it be shown how much is tea sweepings and how much is lime.

United States Court of Customs Appeals, December 21, 1916.

APPEAL from Board of United States General Appraisers, Abstract 39015.

[Reversed.]

*Bert Hanson*, Assistant Attorney General (*Thomas F. Tumulty*, assistant attorney, of counsel), for the United States.

*Levi Cooke* for appellees.

[Oral argument October 10, 1916, by Mr. Hanson and Mr. Cooke.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

Tea sweepings, mixed with a percentage of lime and asafetida for the purpose of precluding their use as tea, were classified by the collector of customs as tea sweepings, and duty was assessed on the full weight of the mixture at 1 cent per pound under the provisions of paragraph 13 of the tariff act of 1913, which paragraph reads as follows:

13. Caffein, $1 per pound; compounds of caffein, 25 per centum ad valorem; impure tea, tea waste, tea siftings or sweepings, for manufacturing purposes in bond, pursuant to the provisions of the act of May sixteenth, nineteen hundred and eight, 1 cent per pound.

The importers filed with the collector of customs in the manner and within the time prescribed by law their protests, in which they claimed that the merchandise was tea waste, to which, in accordance with the regulations of the "English customs," lime and asafetida had been added to prevent its use for human consumption. These protests fairly set up the claim that duty should have been taken by

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the collector on the weight of the goods less the weight of the lime and asafetida, and that no duty at all should have been imposed on the lime or asafetida.

The Board of General Appraisers held in effect that the importation was composed of mingled goods which were separable, and that it should not have been subjected to duty as an entirety. The claim of the importers that the specific rate of duty prescribed for tea sweepings should not have been imposed on the full weight of the goods was therefore sustained, and the collector was directed to assess duty on the tea sweepings "less the amount of lime shown and upon the lime as provided for in the statute." The Government appealed.

It appears from the report of the appraiser at New York that "the merchandise consists of tea waste or tea sweepings denatured by the use of asafetida and lime." On the hearing before the board, counsel for the importers announced his intention of offering what he said was a London port order, requiring the addition to tea sweepings of 10 per cent of denaturants. The port order was never actually offered or received in evidence. The brief of the Government, however, admits that Great Britain does require that tea sweepings shall be mixed with at least 10 per cent of lime and asafetida in order to denature the tea sweepings and render them unfit for human consumption, but insists that it does not appear from the regulations whether the mixture is made on the basis of volume or weight. The importers set out in their brief what purports to be a copy of the regulations in question, but as those regulations were neither offered nor received in evidence it is apparent that we can not consider them for the purpose of adding anything to the admission made by the Government.

Evidently the addition of asafetida and lime to the tea sweepings was designedly made and apparently had for its purpose the production of a class of tea sweepings which was unfit for use as tea and which without the admixture would not be merchantable in Great Britain. As the denaturing substances were added to the tea sweepings in order to render the latter unavailable for human consumption, it would seem fair to presume that the product was made up to be used as an entirety not readily resolvable into its original elements, and that the lime, asafetida, and tea sweepings of which it is composed are no longer different, distinct, and independent commodities, but the constituents of the single commodity known as denatured tea sweepings. Be that as it may, it is very certain that the importation as it came into the country presented itself not as three different classes of merchandise but as an article which at first instance might well be treated by the collector as an entirety. The collector so treated it, inasmuch as he found it to be denatured



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tea sweepings, and classified the entire importation as tea sweepings dutiable at the rate imposed on merchandise of that kind. To overcome the presumption of correctness attaching to that decision it was necessary for the importer, after protests, to establish by competent proof before the Board of General Appraisers that the importation was not an entirety, but three, or at least two, different kinds of merchandise separately assessable for duty. The evidence in the record establishes that the tea sweepings were denatured by the addition of a certain percentage of lime and asafetida, but it does not show, in our opinion, that the denaturing ingredients so far maintained their identity that they could be properly regarded as importations of lime and asafetida. The manifest purpose of the lime and asafetida in the product was to render it unfit for use as tea, and in accomplishing that result it can not be safely said, in the absence of evidence, that the denaturing substances themselves were unaffected to the extent that they retained their identity. It is true that the chemical analyses shows that in one of the importations there is 8.33 per cent of lime and in the other 6.45 per cent of lime, but that is no proof at all that the lime and tea sweepings have not become so intimately united as to constitute a single entity. Indeed, that such a union was not only possible but may have actually taken place seems to have been rather borne out than otherwise by the fact that from 16½ to 35½ per cent of the original lime content was not identifiable even by chemical analysis. For all that we know and for all that the board knew from the evidence denatured tea sweepings are not only bought abroad as entireties but sold and used for manufacturing purposes in this country as entireties, and under such circumstances it would be going a bit far to consider the components of the merchandise as separate entities, especially as there is some warrant for believing that lime in denatured tea sweepings may not be a disadvantage to be removed, but a desirable element to be retained in the product for the manufacture of caffein, the use to which tea sweepings are put. (See Caffeine, Encyclopædia Britannica; Caffeine, New International Encyclopedia; Thorpe, Dictionary of Applied Chemistry, Vol. III, p. 935.)

The decision of the Board of General Appraisers is *reversed.*

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(T. D. 36902.)

*Paper from Norway.*

DOW CO. *v.* UNITED STATES (No. 1697).

1. CANADIAN RECIPROCITY.

The tariff act of 1913 was designed to be a complete revision of the tariff laws of the country, and its wording very clearly shows that it was intended as a substitute for all prior tariff legislation not saved by the act itself. The rule seems to be well

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settled that an act of that character must be held to have repealed all prior laws not expressly continued in force and relating to the same subject. And, so, the tariff act of 1913 repealed section 2 of the Canadian reciprocity act.

2. WRAPPING PAPER FROM NORWAY.

Paper imported from Norway, answering to the description of section 2 of the Canadian reciprocity act and imported under the conditions therein set out, is not, by virtue of the favored-nation clause in a subsisting treaty with Norway, admissible free of duty under said section, because said section was repealed by the tariff act of 1913. The paper is dutiable as "wrapping paper not specially provided for" under paragraph 328, tariff act of 1913.

## United States Court of Customs Appeals, December 21, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7848 (T. D. 36116).

[Affirmed.]

*Walden & Webster* (*Henry J. Webster* of counsel) for appellant.

*Bert Hanson*, Assistant Attorney General (*Thomas J. Doherty*, special attorney, of counsel), for the United States.

[Oral argument October 20, 1916, by Mr. Webster and Mr. Hanson.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

Paper imported from Norway and classified by the collector of customs at Seattle as wrapping paper valued at less than 4 cents per pound and not specially provided for, was assessed for duty at 25 per cent ad valorem under the provisions of paragraph 328 of the tariff act of 1913, which paragraph, in so far as it is pertinent to the case, reads as follows:

328. * * * Wrapping paper not specially provided for in this section, 25 per centum ad valorem.

The importers protested that under section 2 of what has come to be known as the Canadian reciprocity act the importation was free of duty, by virtue, apparently, of the favored-nation clause in a subsisting treaty with Norway. Section 2 reads as follows:

SEC. 2. Pulp of wood mechanically ground; pulp of wood, chemical, bleached, or unbleached; news print paper, and other paper, and paper board, manufactured from mechanical wood pulp or from chemical wood pulp, or of which such pulp is the component material of chief value, colored in the pulp, or not colored, and valued at not more than four cents per pound, not including printed or decorated wall paper, being the products of Canada, when imported therefrom directly into the United States, shall be admitted free of duty, on the condition precedent that no export duty, export license fee, or other export charge of any kind whatsoever (whether in the form of additional charge or license fee or otherwise), or any prohibition or restriction in any way of the exportation (whether by law, order, regulation, contractual relation, or otherwise, directly or indirectly), shall have been imposed upon such paper, board, or wood pulp, or the wood used in the manufacture of such paper, board, or wood pulp, or the wood pulp used in the manufacture of such paper or board.

The Board of General Appraisers overruled the protest and the importers appealed.

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No evidence was taken at the hearing before the board, and the case was submitted for decision on the following stipulation:

It is hereby stipulated and agreed by and between counsel that the paper covered by the protest herein is valued at less than 4 cents per pound; that it was exported directly from Norway to this country; that it is the product of Norway; that no export duty, export license fee, or other export charge of any kind whatsoever, or any prohibition or restriction in any way upon exportation has been imposed upon the paper covered by the above protests or upon the wood pulp used in the manufacture of said paper, or the wood used in the manufacture of said wood pulp; that said paper was manufactured only from wood pulp made in Norway from wood which was itself grown in Norway.

The Government contends that section 2 of the Canadian reciprocity act upon which the importer relies was repealed by the tariff act of 1913 and that as a result of that repeal the importation is dutiable as by that act provided. The importer on its part argues that section 2 was not in terms repealed by the act of 1913 and that as section and act are not repugnant or inconsistent no repeal can be implied.

Section 1 of the reciprocity act had for its sole purpose the promotion of reciprocal trade relations with the Dominion of Canada, and in furtherance of that purpose provided expressly that certain articles, the growth, product, or manufacture of the Dominion of Canada, should be admitted to the United States free or at favoring rates of duty on condition that like or other articles the growth, product, or manufacture of the United States should be admitted to the Dominion of Canada free or at favoring rates of duty. Section 2, however, upon which the importers rely, granted free entry to the news print paper and other paper therein described and for that grant no reciprocal favor was required of Canada. Canada refused to approve the reciprocal features of the act, and in consequence the provisions of section 1 did not take effect. Section 2, however, became operative on the passage of the act, and operative not for the purpose of promoting reciprocal trade relations with Canada, but for the purpose of free listing paper of a certain kind or class imported therefrom. In other words, reciprocity with Canada having failed, section 2 went into effect as a tariff provision and as part of the tariff law of the land.

The whole question in the case, therefore, resolves itself into this: Was section 2 repealed by the subsequent passage of the tariff act of 1913? We think it was, because it is in conflict with at least one provision of the later tariff law and repealed by another. The very first mandate of the tariff of 1913 requires that on and after the day following the passage of the law the rates of duty prescribed by the schedules and paragraphs thereof, except as otherwise provided by the act itself, shall be levied, collected, and paid upon all articles imported from any foreign country into the United States or into any of its possessions, except the Philippine Islands and the islands of Guam and Tutuila. Giving to that provision the meaning which its

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terms import, it is evident that if the act of which the provision is a part imposes a duty on the goods in controversy, no effect can be given to section 2 of the reciprocity act exempting such goods from duty, unless the later legislative dispensation specially so provides. Schedule M of the tariff act of 1913 does subject to duty goods of the class imported, and as we find nothing in that act which continues in force the provisions of section 2 of the reciprocity act entitling such goods to free entry, it results that section 2, exempting the goods in controversy from duty, is in conflict with Schedule M, and, therefore, even if the later enactment contained no repealing provisions, it would seem to be repealed by necessary implication, at least in so far as it affects the merchandise under discussion. District of Columbia *v.* Hutton (143 U. S., 18, 26–27). But, however that may be, paragraph S of section 4 of the tariff act of 1913 expressly provides that "all acts and parts of acts inconsistent with the provisions of this act are hereby repealed," provided that nothing in the act shall be construed to repeal or in any manner affect certain laws and parts of laws specified in the provisos to the paragraph. Section 2 is, as we have seen, manifestly inconsistent with the provisions of the later act, and as it is not one of the laws saved by the provisos, it must therefore be regarded as repealed by the express terms of the clause of paragraph S which has just been cited.

The importers, however, contend that the act of 1913 is a general statute, and that as section 2 of the reciprocity act is a special provision restricted to wood pulp, paper, and paper board imported from Canada, it is continued in force as an exception to the general law. The tariff act of 1913 is a general law in the sense that it is a general tariff law dealing with the whole subject of tariff duties, but inasmuch as it expressly and specifically provides that wrapping paper imported from *any* foreign country, and therefore from Canada, shall be subjected to a duty of 25 per cent ad valorem, it is in that particular just as specific and special as to purpose and matter covered as is section 2 itself, and possibly more so. Consequently the cases cited by learned counsel for the importers holding that special statutes in the absence of an express repeal remain in force as exceptions to the general law can scarcely be said to have any application here. Moreover, it is now a matter of history that the tariff act of 1913 was designed to be a complete revision of the tariff laws of the country, and its wording very clearly shows, we think, that it was intended as a substitute for all prior tariff legislation not saved by the act itself. The rule seems to be well settled that an act of that character must be held to have repealed all prior laws not expressly continued in force and relating to the same subject. Kent *v.* United States (73 Fed., 680); United States *v.* Ranlett (172 U. S., 133, 140–141); District of Columbia *v.* Hutton (143 U. S., 18, 26–27).

The decision of the Board of General Appraisers is *affirmed.*

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## (T. D. 36903.)

*Validity of protest.*

WELLS, FARGO & CO. *v.* UNITED STATES (No. 1685).

1. PLEADING—PROTEST, ALTERATION OF.

A protest showing that "626" had been typewritten as the number of the paragraph claimed under, but had been erased and "555" inserted with lead pencil in lieu thereof, is, in the absence of any claim that it had been tampered with, sufficient to claim under paragraph 555.

2. EVIDENCE—AGENCY, PROOF OF.

The existence of a parol agency may be shown by the testimony of the agent.

3. CONSTRUCTION, SUBSECTION 14 OF SECTION 28, TARIFF ACT OF 1909—"AGENT OF SUCH MERCHANDISE."

Generally speaking, agency when not implied by law, arises from a contractual relation, express or implied, between one party called the principal and the other the agent, and inanimate objects like the merchandise in this case are obviously without ability to create agents, nor can the statute be so interpreted. A protest signed by the agent of the owner and importer in his own name only complies with the provision of subsection 14 of section 28, tariff act of 1909, that the protest must be made by the "owner, importer, consignee, or agent of such merchandise."

4. RES ADJUDICATA.

Showing that the merchandise in this case is identical with that in another, without incorporating in this case the record of the other, and without introducing in this case such evidence as was introduced in the other, does not support a claim that the holding in the other case is *res adjudicata* of the issue in this one.

5. EVIDENCE—JUDICIAL NOTICE.

Opals, no samples being submitted, were described by the evidence as having one surface cut and polished. The court can not judicially know that they are "rough or uncut, and not advanced in condition or value from their natural state by cleaving, splitting, cutting, or other process" (paragraph 555, tariff act of 1909). The board's decision sustaining the collector's classification of them under paragraph 449 ("other precious stones and semiprecious stones, cut but not set, and suitable for use in the manufacture of jewelry") must be affirmed.

United States Court of Customs Appeals, December 21, 1916.

APPEAL from Board of United States General Appraisers, Abstract 38869.

[Affirmed.]

*McLaughlin, Russell, Coe & Sprague* and *Edward P. Sharretts* for appellants.

*Bert Hanson*, Assistant Attorney General (*John J. Mulvaney*, special attorney, of counsel), for the United States.

[Oral argument October 17, 1916, by Mr. Sharretts and Mr. Hanson.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the court:

The importation in this case was made at the port of New York and while the tariff act of August 5, 1909, was in force. The first question made upon the record is that the protest is deficient in that it does not state under what paragraph the claim for free entry is made.

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Before the Board of General Appraisers the United States moved to dismiss the protest upon the above ground and the board sustained the motion, saying in substance that a close scrutiny of the protest paper showed that the figures "626" were typewritten after the word "paragraph" in that part of the protest pointing out the statute under which free entry was claimed; that these typewritten figures had been erased and figures resembling "555" in very faint lead-pencil writing substituted therefor; that it was unable from an inspection to say whether this substitution of numbers was intended or not; that paragraph 626 was not applicable to the merchandise in question and therefore if it was intended to be relied on the protest would be overruled; that if paragraph 555 was the one invoked, the claim thereunder appeared to have been an afterthought and written in and the original paragraph number erased after the protest was filed, in which event it would appear that the protest had been tampered with, was not the protest filed, and was therefore invalid.

Justice to all parties requires us to say that it is not claimed here that the protest has been tampered with in any way, and we discover nothing whatever that so indicates.

We dispose of this first question by saying that a careful inspection of the protest satisfies us that the paragraph inserted therein and claimed applicable is free-entry paragraph 555, which reads:

> Diamonds and other precious stones, rough or uncut, and not advanced in condition or value from their natural state by cleaving, splitting, cutting, or other process, including glaziers' and engravers' diamonds not set.

The board, having sustained the motion to dismiss for the reasons above stated, gave no consideration to the other issues in the case which are here for decision and argued by counsel. The first of these is that protest was not made by the owner, importer, consignee, or agent of the merchandise. The protest is signed "Wells, Fargo & Co.", by McLaughlin, Russell, Coe & Sprague, attorneys. Under subsection 14 of section 28 of the act of 1909 the protest must be signed by the owner, importer, consignee, or agent of the merchandise, and the Government claims this protest does not comply with said statute in that it was not signed by either or any of the prescribed parties, and therefore must be dismissed.

The entry papers are not before us. From the undisputed testimony of one of the appellants' witnesses it appears that the imported merchandise was owned by Mr. Wollaston; that the witness, a representative of Wells, Fargo & Co., went with him to the customhouse in New York, where a declaration of ownership was made and bond given for the production of the consular invoice; that thereupon the claim of free entry was denied by the customs officers and payment of duty insisted upon. The witness closed this part of his testimony by saying, "We then filed the protest at his (meaning Mr. Wollaston's) request."

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He further said that Wells, Fargo & Co. were customhouse brokers for Mr. Wollaston and acted for him in filing the protest; that at its date he was pretty sure they had written authority from him to file it, but after search they were unable to find it; and that Mr. Wollaston left the city soon after the entry was made, since which time the witness had not seen him.

The Government insists that inasmuch as Wollaston was the owner of the goods this evidence does not establish that Wells, Fargo & Co. had any authority to deal with the merchandise or to file the protest. The appellants argue that the undisputed evidence requires and warrants the conclusion that the protest was filed at the request of the owner by Wells, Fargo & Co. and establishes the right of that company to act as the agent of the owner and importer of the merchandise in this proceeding. The Government, replying to this, asserts that if that conclusion be assumed as proven, nevertheless the language of subsection 14 is that the protest must be signed by the owner, importer, consignee, or agent of the merchandise, and that although it may be conceded that Wells, Fargo & Co. is the agent of the owner and importer, it is not the agent of the merchandise and cites in this connection the case of Abegg *et al. v.* United States (71 Fed., 960).

The Government claims this case, which involves the interpretation of section 14 of the customs administrative act of 1890, the relevant language of which is identical with that under consideration, is authority for the proposition that there is a distinction between the agency of the merchandise and the agency of the importer and therefore that although the latter may be established in the case at bar, the former is not, and hence the protest is defective.

The opinion in the case of Abegg & Rusch *v.* United States, a case at circuit, when carefully considered, does not warrant the conclusion that the learned judge really meant to hold that the "agent of the merchandise," as that term is used in the statute, was anything other than the agent of the owner thereof. It is true that in the opinion it is said that the statute "permits a protest to be made by the importer, consignee, or agent of the merchandise; not agent of the importer or consignee but of the merchandise itself." So far, this would indicate that the court had in mind that the agent of the importer or consignee could not be the agent of the merchandise. The opinion, however, proceeds to state that—

> Robertson was the owner. Robertson has not been produced as a witness, nor is he a party in any way to this litigation. * * * If Robertson had been produced as a witness and had testified that he gave these men the authority to make this protest, or if there were a written authorization filed in the customhouse to that effect, it would be a very different matter; but Robertson is an entire stranger to this controversy, and it seems to me that the evidence fails to establish such agency as is contemplated by section 14.

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It is obvious that the court did not mean to hold that an agent of the merchandise in the contemplation of the statute might not derive his authority from the owner, neither at present do we see any reason why such agency may not be created by the importer or consignee whether owner or not. Agency, as far as relates to the facts in this case, presupposes the existence of a party having such relation to the merchandise as to be clothed with authority regarding it. Generally speaking, agency when not implied by law arises from a contractual relation, express or implied, between one party called the principal and the other the agent, and inanimate objects like the merchandise in this case are obviously without ability to create agents, nor can the statute be so interpreted. Neither do we think the court meant to say that an agency created by the owner can be shown only by his testimony. Such a conclusion is contrary to the settled law as to proof of the creation of any agency by parol, for an agency of this class, it has often been adjudicated, may be established by the testimony of the agent himself. Livingston *et al. v.* Swanwick (2 U. S., 2 Dall., 300; 31 Cyc. 1651 and cases cited).

The record before us, while not as satisfactory in that respect as might be desired, we think, in view of the testimony above set forth, sufficiently establishes that the appellants here are, for the purposes of this case, the agents of the owner. In this connection we do not consider an exhibit purporting to be a copy of a written authority from the owner to the appellants to receive a refund of duties in this case nor the statement in writing made in connection therewith that he had employed the appellants to act for him and in his stead as agents to clear the goods through the customhouse or to make protest in his behalf, because this purported copy, although in the files, does not come there in a manner that gives it probative force and also because the record shows that what is probably this document, which is therein characterized as an *ex parte* affidavit, although received, was marked for identification only under the objection of the Government and that decision as to its admissibility in evidence by the board was reserved. We are not unmindful that in G. A. 1069 (T. D. 12255), G. A. 3677 (T. D. 17629), and G. A. 7440 (T. D. 33240), the Board of General Appraisers held in view of the circumstances of each case and in some instances upon the authority of Abegg & Rusch *v.* United States, that the protests could not be sustained, but in each case, as we understand the same, there is no evidence whatever that the protestant was the owner, importer, or consignee of the merchandise or had been authorized by any party whatsoever to file the protest.

We do not think the last above-mentioned cases are at all determinative of this issue. It is undoubtedly true that viewed from a strictly legal standpoint, the better practice would have been for the

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appellants in the case at bar to have signed this protest in Wollaston's name by themselves as agents or in their own names as agents for Wollaston, but we think a protest signed by the name of the agent alone, with no qualifying words, when upon hearing the agency in fact is proven, is a compliance with the law, and is sufficient for the purposes of the statute now under consideration. This conclusion seems to be supported by authority. In Mason *v.* Kane (Fed. Cas., No. 9241), the imported merchandise was owned by nonresident aliens and consigned to merchants in Baltimore, who entered the same, paid the exacted duties and filed protests in their own names. The remedy at that time for unlawful assessment was by suit against the collector and the statute authorizing the same provided that such action could not be maintained unless the protest was made in writing and signed by the claimant. In the cited case the action was brought by the nonresident owner and it was urged that the protest signed as before stated would not support the action. While the right of recovery was denied because the protest itself was not sufficiently specific, yet as the initial issue in that case the court fully considered the objection above stated, held that the protest by the consignee in his name was the protest of his principal if he saw fit to adopt it, and that the statute then under consideration (1 Stat., 675) providing that the consignee prior to the entry and payment, or securing the payment of duties on merchandise, etc., "shall be held to be the owner of the property" did not prevent the real owner from bringing suit to recover duties unlawfully exacted under the act of February, 1845 (5 Stat., 727), which provided that the action against the collector to recover duties paid under protest could not be maintained unless the protest was made in writing and signed by the claimant.

In Gray *v.* Lawrence (Fed. Cas., No. 5722) the consignee, who was the agent of the importer, entered the goods and filed a written protest against the assessment. In an action by the importer against the collector, the Government, relying on the same act of 1845, again contended that the action could not be maintained because the protest was not signed by the claimant of the goods personally. Following the case of Mason *v.* Kane, *supra*, the court overruled this contention, saying that "an entry or protest made by an agent is in law made by the principal," and that the act of 1845 did not necessarily impugn that general principle.

In G. A. 4038 (T. D. 18725) the importation of merchandise of American manufacture was made by a party other than the exporter thereof, the entrant being the consignee. It was objected that free entry could not be granted because the merchandise was not imported by the exporter as required by the statute. The board found upon the evidence that the importer was in fact the

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agent of the exporter and sustained the protest in the agent's name upon the ground "*Qui facit per alium facit per se.*" See also Whitney *v.* Wyman (101 U. S., 392, at 395 and 396), Grandmange *v.* Schell (32 Fed., 655), and Herman *v.* Schell (18 Fed., 891).

Protests are commercial rather than legal documents and the trend of decisions respecting them is that they are not required to conform to the technical precision of legal documents either as to phraseology or formality of execution and when upon the hearing of the case before the Board of General Appraisers it appears that the protestant *in fact* sustains the required statutory relation to the merchandise, we think they ought not to be dismissed.

To the argument of the Government that if this protest be held good in the particulars now under consideration, there may in like cases be an embarrassment in collecting duties on reliquidation, or that the Government may be made an unwilling party to a private dispute between principal and agent, it may be said that if the merchandise is not delivered to the importer or if delivered a bond is taken to secure the further payment of duties, one of which alternatives, as we understand, exists in cases of this kind, the embarrassment suggested would be no greater than in the case of any importation, and so far as involving the Government in a dispute between the principal and the agent, we do not see how that could occur. This is not a case which involves the binding force and effect of a contract made by an agent, but rather is a question of practice or procedure under a statute providing how an action may be instituted. If recovery is had by the agent in this proceeding, the agent is in duty bound to account to his principal. The Government having refunded, if such be the judgment, is not further liable and is not a party to any dispute which may arise between the principal and the agent.

There remains for consideration and disposal, however, the further question as to whether or not the protest can be sustained upon its merits. It may again be noted that the Board of General Appraisers, having dismissed the protest as hereinbefore set forth, did not consider either the question of agency or the dutiability of the merchandise.

Is the importation entitled to free entry under paragraph 555 above quoted or shall the collector's assessment be upheld? The relevant part of paragraph 449, under which the collector acted, provides that "diamonds, coral, rubies, cameos, and other precious stones and semiprecious stones, cut but not set, and suitable for use in the manufacture of jewelry shall pay a duty of ten per centum ad valorem." The appellants contend that paragraph 555 is applicable and upon them falls the burden of sustaining this claim. With reference to that they fail to suggest wherein the *evidence* supports

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this contention but urge that this question is *res adjudicata*, because in G. A. 7364 (T. D. 32525) the board held that opals having a rough surface removed by cutting and polishing for the purpose of ascertaining the character of the stones, the polishing having been done by the miners who dug the minerals out of the earth, were entitled to free entry. This claim is based upon the fact that the evidence of the record is, and it was given by a Government examiner, that the merchandise in the case at bar is exactly like that involved in the case last cited. In that case the board in its opinion said that the "concurrent testimony of all the witnesses is to the effect that the merchandise has not been advanced either in value or condition; but that it has in fact been reduced in value and its commercial availability impaired by the unskilled work of the miners." The appraiser in that case, as in this, had reported in substance that the opal had been advanced in value and condition from its natural state by having one surface polished. In the case before us, no samples are produced and we must be guided by the evidence introduced before the board. No effort was made to incorporate the record of the former case herein and the appellants must stand or fall upon the evidence here, which is, as stated, that the merchandise is exactly like that in the former case. We have no evidence whatever, as was introduced in the former case, that the merchandise has not been advanced in value but has in fact been reduced by the polishing process. Paragraph 555 provides that in order to be entitled to free entry the articles described in that paragraph must be rough or uncut and not advanced in value or condition from the natural state by cleaving, splitting, cutting, or other process. While upon the testimony introduced before them in the other case, the board might have been justified in holding that paragraph 555 did not cover the merchandise there in question, we think it can not be said such holding is *res adjudicata* of the issue here, when there is no such evidence as was introduced in that case. We are unwilling to say that these opals are rough or uncut and not advanced in value or condition from their natural state by cleaving, splitting, cutting, *or other process*. Concededly, one surface has been polished. What processes were employed in producing that result we are not informed, neither do we know when it was done, and there is no evidence that the treatment to which it has been subjected has not advanced its value. Because in the former case it was found that the merchandise had not been advanced in value does not justify us in inferring it is so in this case.

To bring the importation here within the rule of that case it was incumbent upon the appellants to show substantially the same facts, and the absence of such showing leaves us no alternative but to uphold the collector's assessment. Therefore, while we do not

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concur in the conclusion of the board based upon the reasons stated by it, nevertheless the proper entry in this case is that its judgment sustaining the collector's classification be *affirmed*.

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## (T. D. 36904.)

### *Pruning shears—Agricultural implements.*

UNITED STATES *v.* DUCOMMUN HARDWARE CO. (No. 1705).

1. SHEARS FOR PRUNING VINEYARDS AND ORCHARDS.

Shears used exclusively for pruning vineyards and orchards come within the rule of United States *v.* Boker & Co. (6 Ct. Cust. Appls., 243; T. D. 35472). They and their parts are admissible free of duty as agricultural implements and parts under paragraph 391, tariff act of 1913. They are not dutiable as "shears" under paragraph 128; and bolts and nuts for them are not dutiable as bolts and nuts under paragraph 123.

2. CONSTRUCTION—INTENT CONTROLS—EO NOMINE DESIGNATION—USE.

The rule of *eo nomine* application is but a rule of construction designed to aid in ascertaining the legislative intent, and while of high importance, is never controlling when it clearly appears that Congress intended a particular article to be otherwise classifiable. Congress intended that those shears which are chiefly used agriculturally should not be dutiable as "shears" under paragraph 128, tariff act of 1913, but admissible free of duty as agricultural implements under paragraph 391.—Quirk *v.* United States (6 Ct. Cust. Appls., 444; T. D. 35983) distinguished.

3. DOUBT FAVORS IMPORTER.

When the application of the recognized rules of construction leaves a point in doubt, the court should give the importer the benefit of the doubt.

United States Court of Customs Appeals, December 21, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7876 (T. D. 36251).

[Affirmed.]

*Bert Hanson*, Assistant Attorney General (*Martin T. Baldwin*, special attorney, of counsel), for the United States.

*Edward G. Küster* and *Gilbert A. McElroy* for appellee.

[Oral argument October 10, 1916, by Mr. Hanson.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the court:

The merchandise involved in this case is pruning shears. The uncontroverted evidence is that they are used exclusively for pruning vineyards and orchards. There are also parts of such shears which, while not described in the evidence, from the papers in the case seem to consist of blades, bolts, and nuts. We assume for the purpose of decision that these blades, bolts, and nuts are entitled to the same classification as the pruning shears, if such shears are entitled

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to free entry, because there seems to be no controversy made on this question. The issue is whether these pruning shears are classifiable as agricultural implements within the provisions of paragraph 391 of the tariff act of 1913, which reads as follows:

Agricultural implements: Plows, tooth and disk harrows, headers, harvesters, reapers, agricultural drills and planters, mowers, horserakes, cultivators, thrashing machines, cotton gins, machinery for use in the manufacture of sugar, wagons and carts, and all other agricultural implements of any kind and description, whether specifically mentioned herein or not, whether in whole or in parts, including repair parts—

Or are dutiable under paragraph 128, the relevant part of which provides for "scissors and shears and blades for the same, finished or unfinished, 30 per centum ad valorem." In view of the conclusion reached in this opinion, we do not refer to the paragraph under which the bolts and nuts are claimed dutiable, except to say that it is 123 of the same act.

The Board of General Appraisers sustained the protest, claiming all the merchandise classifiable under paragraph 391.

The Government, while accepting for the purposes of this case the board's finding that the shears are agricultural implements, in substance contends that they are dutiable as shears, rather than as agricultural implements, upon the ground that the *eo nomine* provision for shears in paragraph 128 governs the classification.

In United States *v.* Boker & Co. (6 Ct. Cust. Appls., 243; T. D. 35472) full consideration was given to the meaning of paragraph 391 and it was said in substance that agriculture may extend into and include horticulture, viticulture, arbor culture, and other allied industries and pursuits, and embrace such parts thereof as pertain to human and incidental animal subsistence; "the essential requirements of life (food) and possibly man's comfort (raiment) and not merely the pleasurable pursuits; the necessities and not the essentially pleasurable or ornamental." It was also said "that the use of the instrument must determine its classification * * * and that that use, and the determinative fact, is chief use."

The manifest purpose of the agricultural paragraph is to discriminate in favor of agriculture, and under the authority of the Boker case we think that, it being shown that these shears are not only chiefly, but exclusively, used in agriculture as therein defined, their classification falls thereunder. The language of the paragraph is, after *eo nomine* mentioning certain articles, "and all other agricultural implements of any kind and description, whether specifically mentioned herein or not, whether in whole or in parts, including repair parts." While these pruning shears are not specifically mentioned in the paragraph, they are upon the record agricultural implements.

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That they are one kind of shears is also conceded, but it is apparent from common knowledge that there are many kinds of shears that are not agricultural implements in any sense, and perhaps that there are still others which, while they may be incidentally used for agricultural purposes, are not exclusively or chiefly devoted to that use. As to such shears the *eo nomine* provisions of paragraph 128 would doubtless be applicable. The rule of *eo nomine* application, as we have had occasion many times to remark, is but a rule of construction designed to aid in ascertaining the legislative intent, and while of high importance, is never controlling when it clearly appears that Congress intended a particular article to be otherwise classifiable, and we think this is such a case.

The instant case is not like that of Quirk *v.* United States (6 Ct. Cust. Appls., 444; T. D. 35983), cited by the Government, because there the question was whether pruning knives and budding knives which had folding or other than fixed blades, were dutiable under paragraph 128 of the act of 1913 or as agricultural implements under paragraph 391. There was no proof of chief use. It was held that the very precise description of paragraph 128 of "pruning knives and budding knives * * * and of knives by whatever name known, including such as are denominatively mentioned in this section, which have folding or other than fixed blades or attachments" furnished the rule for classification when contrasted with the general term "agricultural implements," the record containing, as stated, no proof as to chief use. The provisions for "shears" in that paragraph, however, lack many very specific features that attach to the knives thereunder made dutiable. There is no language in the paragraph defining more closely "shears" than the word itself, and we think it may well be concluded that from "shears" thus described, those which are shown to be used chiefly as agricultural implements may be excluded and the same classified under paragraph 391.

Neither do we think the case of Chew Hing Lung *v.* Wise, collector (176 U. S., 156), is controlling. There the question of chief use in determining the dutiability of an article when the competing provision was an *eo nomine* one, was not in issue, and the court said "the case is not within the principle decided in Magone *v.* Heller (150 U. S., 70)." We think the reasoning of the Magone case, which it is unnecessary to discuss, conduces to the conclusion we reach in the case at bar. See also United States *v.* Horrax (1 Ct. Cust. Appls., 142; T. D. 31187).

If it be conceded that the instant question is not wholly free from difficulty, it is settled law that the doubt must be resolved in favor of the importers.

The judgment of the Board of General Appraisers is *affirmed.*

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## (T. D. 36905.)

### *Rugs—Carpets.*

BEUTTELL & SONS *v.* UNITED STATES (No. 1696).

1. CONSTRUCTION, PARAGRAPH 303, TARIFF ACT OF 1913—"RUGS FOR FLOORS."

Paragraph 303, tariff act of 1913 ("rugs for floors"), includes only those rugs made from carpets or carpeting.

2. CONSTRUCTION, PARAGRAPH 300, TARIFF ACT OF 1913—"SIMILAR RUGS."

All the rugs named in paragraph 300, tariff act of 1913, are handmade or hand tufted. Hence, a rug not handmade or hand tufted is not a "similar rug" within the paragraph.

3. CONSTRUCTION, PARAGRAPH 300, TARIFF ACT OF 1913—"WOVEN WHOLE FOR ROOMS."

The language "carpets of every description, *woven whole for rooms*," paragraph 300, tariff act of 1913, shows, by the express inclusion of this class of "carpets" or carpeting, that the other enumerations therein would not otherwise have included it; in other words, that carpets and carpeting and things made therefrom were not otherwise embraced within paragraph 300.

4. SEAMLESS WILTON AND TAPESTRY BRUSSELS RUGS.

Seamless Wilton and tapestry Brussels rugs, cut from long rolls of "carpet or carpeting" and fringed or bound, are not dutiable under paragraph 300, tariff act of 1913, as "similar rugs" to the rugs named in paragraph 300, because they are machine made, whereas the rugs named in paragraph 300 are handmade or hand tufted. They are, by virtue of paragraph 303, dutiable, respectively, at the rate prescribed by paragraph 294 for Wilton carpets or carpeting, and at the rate prescribed by paragraph 297 for tapestry Brussels carpets or carpeting.

United States Court of Customs Appeals, December 21, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7874 (T. D. 36229).

[Reversed.]

*McLaughlin, Russell, Coe & Sprague* and *Sharretts, Coe & Hillis* for appellants.

*Bert Hanson*, Assistant Attorney General (*Charles D. Lawrence*, special attorney, of counsel), for the United States.

[Oral argument October 17, 1916, by Mr. Sharretts and Mr. Hanson.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

The legislative conspectus, the construction of which is by this appeal presented to the court, is embraced in the following paragraphs of the tariff act of 1913:

293. Aubusson, Axminster, moquette, and chenille carpets, figured or plain, and all carpets or carpeting of like character or description, 35 per centum ad valorem.

294. Saxony, Wilton, and Tournay velvet carpets, figured or plain, and all carpets or carpeting of like character or description, 30 per centum ad valorem.

296. Velvet and tapestry velvet carpets, figured or plain, printed on the warp or otherwise, and all carpets or carpeting of like character or description, 30 per centum ad valorem.

297. Tapestry Brussels carpets, figured or plain, and all carpets or carpeting of like character or description, printed on the warp or otherwise, 20 per centum ad valorem.

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303. Mats, rugs for floors, screens, covers, hassocks, bed sides, art squares, and other portions of carpets or carpeting, composed wholly or in part of wool, and not specially provided for in this section, shall be subjected to the rate of duty herein imposed on carpets or carpeting of like character or description.

300. Carpets of every description, woven whole for rooms, and Oriental, Berlin, Aubusson, Axminster, and similar rugs, 50 per centum ad valorem.

The appeal involves an importation of seamless Wilton rugs marked "A," and of seamless tapestry Brussels rugs marked "B" on the invoice. They were on importation classified by the collector as 'rugs, similar to Axminster rugs," under paragraph 300, *supra*, which classification was on protest sustained by the Board of General Appraisers, Mr. General Appraiser Brown dissenting. The importers appeal to this court, assigning as error and claiming here, as below, that the articles are properly dutiable as "rugs for floors" as that term is employed in paragraph 303, *supra*.

The record is replete with testimony of several trade witnesses of intelligence and exceptional understanding as to the manufacture of and trade usage relating to the various kinds and classes of rugs known to the wholesale trade of this country.

The quoted legislative epitome makes clear that Congress therein had in mind and distinguished for dutiable purposes two kinds of rugs, to wit, "Oriental, Berlin, Aubusson, Axminster, and similar rugs," of paragraph 300, and "rugs for floors," as otherwise qualified in paragraph 303. We may well anticipate then that the record would deal solely with articles known as "rugs," the question being what did Congress intend as the line of differentiation between the two classes of rugs thus made differently dutiable.

Previous litigation has afforded aid in the proper interpretation of paragraph 303. Essentially the same language was used in the tariff act of 1883, paragraph 378, providing that "mats, rugs, screens, covers, hassocks, bed sides, and *other portions* of carpets or carpetings, shall be subjected to the rate of duty herein imposed on *carpets or carpeting of like character or description*." (Italics ours.) (22 Stat. L., 510.) In Beuttell *v.* Magone (157 U. S., 154, 158), the Supreme Court construed these words, thereby declaring the class of rugs included therewithin to be "rugs made from portions of carpets and carpetings." The court employed the following language:

It is clear that rugs in the generic sense are specifically dutiable as such under the foregoing provisions. The imposition of a different duty on rugs of a particular kind is an exception to the general rule established by the statute. The exception is as "to rugs, screens, covers, hassocks, bed sides, and other portions of carpets and carpetings," which are made to pay the duty imposed on "carpets and carpetings of like character and description." The obvious construction of this language is that which makes the words "other portions of carpets and carpetings" qualify the enumerated articles, and, of course, if they be thus construed only rugs made from "portions of carpets and carpetings" would be subject to the exceptional classification.



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It is urged that this interpretation is erroneous, because the limiting words "other portions of carpets and carpetings" simply qualify the last of the enumerated articles; that is, the word "bed side," and none other. It is self-evident that the qualifying words must be held to relate to some of the items embraced in the enumeration which they qualify. To hold otherwise would be to read them out of the statute. Do they qualify all or one is the question. To hold that they qualify only one of the items of the enumeration is to make that item an exception, and therefore make the statute operate an absurdity. If the qualifying words only apply to "bed sides," then all the other items enumerated, viz, "mats, rugs, screens, covers, and hassocks," are dutiable at the rate imposed on "carpets and carpetings of like character and description," although they be not made from "other portions of carpets and carpetings," whilst "bed sides," whatever may be their similarity to "carpets or carpetings," will only be dutiable at the rate of carpets and carpetings if made from pieces of carpets. It can not be supposed the intention of the statute was to operate this inequality or to work out this unjust result. The articles are all enumerated together, and the manifest purpose is that all of them shall pay a like duty under similar conditions. We can not violate the express language in order to dissociate things classed together by the law, and thus make one of the class subject to a higher duty than the others, although they be of like character and description.

Speaking of the entire legislative concept of that act the court in the same case (p. 160) employed language defining the congressional intent here equally pertinent and instructive:

We think the purpose of the statute, plainly conveyed by its text, was to tax carpets as enumerated therein. That the effect of its language and its intent were also to tax rugs, made as rugs, and clearly distinguishable as such, by reason of their process of manufacture, size, shape, pattern, etc., at the duty imposed on rugs, but to tax rugs made from pieces of carpets or carpetings at the rate imposed on the carpet from which they were made, since, although answering the purpose of a rug, they were really carpeting itself, being made from parts or portions thereof.

Aided by this interpretation of paragraph 303, which in the pertinent particulars is in essentially the same language as that part of the act of 1883 construed in Beuttell *v.* Magone, *supra*, other pertinent portions of the act may be more easily assigned the true congressional intent. It follows primarily that paragraph 303 was intended by Congress to include only those rugs "made from carpets or carpeting." Paragraph 300, however, contains an instructive and corroborative phrase. It provides in part for "carpets of every description, *woven whole for rooms*." The express inclusion of this class of "carpets" or carpeting in paragraph 300 by Congress indicates the other enumerations therein would not otherwise have included it. In other words, that carpets and carpeting and things made therefrom were not otherwise embraced within paragraph 300. Indeed, the therein separate legislative enumeration of two certain classes of rugs concludes the question that Congress had in mind a certain distinction between the two enumerated classes.

The testimony in the case is singularly consistent and undisputed. There are oriental, Berlin, Aubusson, and Axminster rugs either handmade entirely or hand tufted. The point is clearly established and undisputed in the record. It shows that the oriental rug is

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always entirely handmade; that the Berlin rug is always hand tufted; that the Aubusson rug is entirely a hand needle-made tapestry; that the true Axminster rug is handmade and hand tufted. There are so-called patent or imitation Axminster rugs made by machinery, but they imitate only in name. The chenille and hand tufted Axminster rugs are in part handmade or hand tufted. There is, however, a common characteristic adhering to an extensive commercial class of all the enumerated rugs in paragraph 300 in that they are handmade or hand tufted. Moreover, they are not made from portions of carpets or carpeting. The possible exception, that might be spoken of as Axminster rugs, is the patent Axminsters, which, by reason of the language of paragraph 303, are included therewithin, in that they are made from carpet or carpeting and are excluded from paragraph 300, in that they are not in fact or description Axminsters or similar to the original and true Axminster rug.

On the other hand, all the enumerations of paragraph 303 "mats," "rugs for floors," "screens," "covers," "hassocks," "bed sides," and "art squares" are machine or loom made entirely. They are all made in rolls from 40 to 60 yards. Like Wilton and tapestry Brussels rugs, such as here in suit, they are woven in long rolls, the particular patterns or rugs being indicated by a drop in the pile continuing as the warp. This is accomplished by manipulation of the loom. These, after the individual rugs or mats are cut apart by hand where thus indicated, are fringed or bound as desired. Carpets and carpeting of all kinds are made precisely the same way, save that where the carpet is to be sewn for an entire room or rug the pile is not dropped for indication purposes. Every witness in this record testified, and that testimony is nowhere contradicted or impeached, that the loom product from which these rugs are subsequently cut is "carpet or carpeting," and so spoken of in trade, and that the separate patterns do not become known as a rug or rugs until they are so cut therefrom and fringed or otherwise bound. Plainly, then, they are rugs "made from portions of carpets or carpetings," as paragraph 378 of the tariff act of 1883 was construed in Beuttell *v.* Magone, *supra.* They are all entirely machine made. While each is a complete figure in itself that is but one of the results of such fabrication, and the record shows not the least more expensive, whether the figures are smaller or more extensive.

It can not be that Congress intended, as claimed by the Government, that this skip of the pile for identification and cutting purposes was the differentiation which cast the goods otherwise included in paragraph 303 into paragraph 300, for the record shows "mats," and in fact all the other enumerations in paragraph 303 made the same way, and the mats concededly fall only within paragraph 303 for dutiable purposes. That rule of decision would exclude all the express enumerations therein made from paragraph 303.

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It can not be that Congress intended "carpets," because seamless and of complete design, should be included in the terms "and Oriental, Berlin, Aubusson, Axminster, and similar rugs," for that would render the previous part of the paragraph, "carpets of every description, woven whole for rooms," surplusage. Congress here makes plain that such are not similar rugs to the included enumerations. There are, however, similar rugs to those enumerated in paragraph 303 known in trade, in that they are handmade or tufted, such as the Donegal, Kildare, Teheran, Cairo, and Mongol. (Record, pp. 39 and 42.)

There seems no serious contention that the "mats" herein represented by Exhibit 2, which are loom made in the piece with identifying lines, are not properly dutiable under paragraph 303 accordingly, as therein required.

The court, therefore, is of the opinion that these importations not being handmade or tufted are not similar to the oriental, Berlin, Aubusson, or Axminster rugs made dutiable under paragraph 300, but being machine made or loom woven and being made from carpets or carpeting are perforce of paragraph 303 dutiable, the Wilton rugs under paragraph 294 and the tapestry Brussels rugs under paragraph 297 of the present tariff law.

*Reversed.*

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## (T. D. 36906.)

### *Sheep shears—Agricultural implements.*

UNITED STATES *v.* IRWIN & Co. (No. 1703).

1. EVIDENCE—JUDICIAL KNOWLEDGE.

The court may well take judicial notice of that which is known by all men—that the sheep which is raised by the American agriculturist furnishes for man not only food but raiment.

2. CONSTRUCTION, PARAGRAPHS 128 AND 391, TARIFF ACT OF 1913—"SHEARS"—"AGRICULTURAL IMPLEMENTS."

The classification of "shears" under paragraph 128 and "agricultural implements'' under paragraph 391, tariff act of 1913, means that all shears chiefly used for agricultural purposes are classifiable under paragraph 391, and other shears under paragraph 128.

3. SHEEP SHEARS.

"Sheep shears, specially designed for shearing sheep" and shown to be exclusively used for that purpose are not dutiable as "shears" under paragraph 128, tariff act of 1913, but admissible free of duty as "agricultural implements" under paragraph 391.—United States *v.* Boker & Co. (6 Ct. Cust. Appls., 243; T. D. 35472).

United States Court of Customs Appeals, December 21, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7877 (T. D. 36252).

[Affirmed.]

*Bert Hanson*, Assistant Attorney General (*Martin T. Baldwin*, special attorney, of counsel), for the United States.

*Brooks & Brooks* (*Albert H. Washburn* and *F. W. Brooks, jr.*, of counsel) for appellees.

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[Oral argument October 31, 1916, by Mr. Hanson and Mr. Washburn.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

The merchandise the subject of this appeal was reported by the appraiser in answer to the protest, which is made a part of the record herein, as consisting of "sheep shears, specially designed for shearing sheep." The articles were rated for duty under the provisions of paragraph 128 of the tariff act of 1913, which, in so far as pertinent, provides:

128. * * * Scissors and shears, and blades for the same, finished or unfinished, * * *.

The importers protested, claiming the merchandise entitled to free entry as "agricultural implements" under the provisions of paragraph 391 of the said act, reading:

391. Agricultural implements: Plows, tooth and disk harrows, headers, harvesters, reapers, agricultural drills and planters, mowers, horserakes, cultivators, thrashing machines, cotton gins, machinery for use in the manufacture of sugar, wagons and carts, and all other agricultural implements of any kind and description, whether specifically mentioned herein or not, whether in whole or in parts, including repair parts.

The Board of General Appraisers sustained the protest in this particular and the Government appeals to this court for a review of that decision.

Paragraph 391 was construed by this court in United States *v.* Boker & Co. (6 Ct. Cust. Appls., 243; T. D. 35472). Therein the court defined the word "agriculture" as it deemed it used in that paragraph. It was therein said:

While, therefore, "agriculture" in its broad application may extend into and include elements of horticulture, viticulture, arbor culture, and other *allied* industries and pursuits, in its primary significance it extends to and embraces only those parts of all such as pertain to human and incidental animal subsistence—the substantial requirements of life (food) and possibly man's comfort (raiment), and not the merely pleasurable pursuits; the necessities and not the essentially pleasurable or ornamental.

The court in that case further determined the classification of the articles within the limitations of the definition adopted. We said:

All these considerations imply and necessitate that the *use* of the implement must determine its classification whether or not an agricultural implement within the paragraph, and that that use, and the determinative fact, is *chief use*.

That rule is so well established and of such frequent reiteration by the courts that its suggestion seems sufficient. This court affirmed and applied the rule as to "smokers' articles" in Knauth *v.* United States (1 Ct. Cust. Appls., 334; T. D. 31432); as to "wire rods," in Athenia Steel & Wire Co. *v.* United States (1 Ct. Cust. Appls., 494; T. D. 31528); applied it in Drakenfeld & Co. *v.* United States (2 Ct. Cust. Appls., 512; T. D. 32248); adopted it as to "jute manufacturing machinery" in United States *v.* Hempstead & Son (3 Ct. Cust. Appls., 436; T. D. 33004), and as to "philosophical and scientific instruments," etc., in United States *v.* Kastor Bros. (6 Ct.

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Cust. Appls., 52; T. D. 35323). In fact no principle is more firmly established in customs adjudication. Magone *v.* Wiederer (159 U. S., 555); Magone *v.* Heller (150 U. S., 70); Cadwalader *v.* Wanamaker (149 U. S., 532); Walker *v.* Seeberger (149 U. S., 541); Chew Hing Lung *v.* Wise (176 U. S., 156); Meyer *v.* Cadwalader (89 Fed., 963); Smith *v.* United States (93 Fed., 194).

Aside from the appraiser's report, which indicates the use of the importations, three witnesses were called who testified that the sole and exclusive use of these shears was for the shearing of sheep. It may be therefore taken as clearly established in the case that the use of these articles is for the shearing of sheep. It is contended by the Government that this use is that remote from the actual tending of the soil and the actual products of the land that it does not fall within the definition of "agriculture" as adopted by the court. The court is unable to agree with this contention. The court therein included within the term "agricultural implements" as used in said paragraph 391 all the elements, horticulture, viticulture, arbor culture (or as expressed by the single word arboriculture), and the allied industries and pursuits, which pertain to human and incidental animal subsistence, pointing out that this extends to the substantial requirements, which are food, and possibly man's comfort, raiment.

The court may well take judicial notice of that which is known by all men, that the sheep which is raised by the American agriculturist furnishes for man not only food but raiment. The sheep industry is a well-known one allied with and commonly conducted with the other agricultural pursuits. These importations are used in the production of man's raiment. It would seem, therefore, that sheep shears are instruments which may well be included within the term "agricultural implements" as used by Congress in the paragraph quoted.

It is urged, however, that paragraph 128 by its specific enumeration of "shears" includes sheep shears. The court has already determined (United States *v.* Boker, *supra*) that paragraph 391 made those instruments classifiable thereunder which are used for agricultural purposes as therein limited. The court specifically found that the chief use of the articles would control, and that all of those articles chiefly used for agricultural purposes, as in said paragraph limited and defined, came within its purview and are accordingly entitled to free entry.

That chief use having been established in this record we think brings this case clearly within the Boker case. The case of Magone *v.* Heller (150 U. S., 70) is precisely parallel. Therein it was contended that under the act of 1883 substances which were shown to be expressly used for manure were not classifiable under a provision of the statute granting free entry to "all substances expressly used for manure" because they were otherwise denominatively provided for in that act. The Supreme Court said:

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Congress, for the promotion of agriculture, evidently intended that if a substance, which might be described by the name of an article subject to duty under Schedule A, was within the description, in the free list, of use for fertilizing the ground, it should be exempt from duty.

This is manifest from the clause in the free list, immediately preceding that now in question, "carbon, animal, fit for fertilizing only," as well as from the clause further on in the same list, "phosphates, crude or native, for fertilizing purposes." (22 Stat., 517.) Animal carbon and crude or native phosphates are both chemical products; yet if the carbon is "fit for fertilizing only," or the phosphate is "for fertilizing purposes," it is clearly intended to come in free, notwithstanding Schedule A imposes a duty on "all chemical compounds and salts, by whatever name known, and not specially enumerated or provided for in this act, twenty-five per centum ad valorem." 22 Stat., 494; Mason *v.* Robertson (139 U. S., 624).

So, by force of the very clause in question, "all substances expressly used for manure," must be exempt from duty, *even if they* are chemical products, and *are scientifically classed as one kind of an article the name of which appears in Schedule A, or are spoken of in commerce by that name.* The agricultural *use* must prevail over the scientific *or commercial nomenclature.*

This case was reviewed and doctrine affirmed by this court in Roger & Gallet *et al. v.* United States (7 Ct. Cust. Appls., —; T. D. 36424), the facts and application appearing in the following excerpt:

Based upon the assumptions already made with reference to the importers' claim, the issue then reduces itself to this: Under which of the paragraphs shall the merchandise be classified? One which contains the *eo nomine* provision for the article, or the other, which relates to a wide variety of toilet articles described in general terms and also contains the precise description of "all preparations used as applications to the skin, including powders and other toilet preparations?" If the language of this last paragraph was not more definite than "powders and other toilet preparations" the importers' contention would seem to be sound in view of the settled doctrine that an *eo nomine* designation prevails over words of general description. This rule, however, is one of interpretation only, and is based upon the principle that when an article is described by name Congress intends to cover such commodities as are within the meaning of the words employed as the same are generally, definitely, and uniformly understood in the trade and commerce of the country. This, however, is but a rule of construction devised and applied for the purpose of ascertaining the legislative intent, and while of great importance, can not be said to be controlling if it appears that Congress intended the classification to be determined by the *use* to which an article is devoted rather than by the *eo nomine* description itself.

The case of Magone *v.* Heller (150 U. S., 70) is peculiarly illustrative of this principle. There an article concededly sulphate of potash, *eo nomine* referred to in a duty paragraph. was held to be entitled to free entry under a pararagph providing for "substances expressly used for manure." * * *

This case was reviewed in Magone *v.* Wiederer (159 U. S., 555) and followed, and again considered in Chew Hing Lung *v.* Wise (176 U. S., 156), where it was expressly stated that the contest in the Magone case was "between a clause of the tariff act of 1883, providing for a duty upon sulphate of potash *eo nomine*, and a clause exempting from duty 'all substances expressly used for manure.'" This quotation was preceded by a general statement of the rule that the commercial designation would control unless there was something else in the law that restrained its operation, and it was declared that the case of Magone *v.* Heller, *supra*, was not subject to such rule, manifestly because of the fact that chief use was the test. See also Fink *v.* United States (170 U. S., 584); United States *v.* Kwong (1 Ct. Cust. Appls., 14; T. D. 30773); United

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States *v.* Horrax (1 Ct. Cust. Appls., 142; T. D. 31187); Drakenfeld *v.* United States (2 Ct. Cust. Appls., 512; T. D. 32248): Taylor *v.* United States (3 Ct. Cust. Appls, 498; T. D. 33162); Chrystal *v.* United States (5 Ct. Cust. Appls., 489; T. D. 35148).

It will be noted that the construction simply reads together the two provisions to the effect that shears shall be rated for duty under paragraph 128, provided, however, that those shears chiefly *used* for agricultural purposes shall be classified under paragraph 391 and accorded free entry.

See also Cadwalader *v.* Zeh (151 U. S., 171, 176), quoting with approval Maillard *v.* Lawrence (16 How., 57 U. S., 250).

*Affirmed.*

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## (T. D. 36907.)

### *Sheep shears—Agricultural implements.*

UNITED STATES *v.* WIEBUSCH & HILGER (No. 1704).

SHEEP SHEARS.

Following United States *v.* Irwin & Co. (7 Ct. Cust. Appls., —; T. D. 36906), decided concurrently herewith, sheep shears are not dutiable as "shears" under paragraph 128, tariff act of 1913, but admissible free of duty as "agricultural implements" under paragraph 391.

United States Court of Customs Appeals, December 21, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7877 (T. D. 36252). [Affirmed.]

*Bert Hanson*, Assistant Attorney General (*Martin T. Baldwin*, special attorney, of counsel), for the United States.

*Comstock & Washburn* (*Albert H. Washburn* and *George J. Puckhafer* of counsel) for appellees.

[Oral argument Oct. 31, 1916, by Mr. Hanson and Mr. Washburn.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

The importations covered by this appeal were sheep shears. The issues of fact and law are the same as presented in United States *v.* Irwin & Co. (7 Ct. Cust. Appls., —; T. D. 36906), this day decided by the court. For the reasons and upon the principles and authorities therein cited the decision of the Board of General Appraisers is *affirmed.*

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## (T. D. 36908.)

### *Flax card cloth.*

STONE & DOWNER CO. *v.* UNITED STATES (No. 1706).

1. CONSTRUCTION, PARAGRAPH 283, TARIFF ACT OF 1913—"PLAIN WOVEN FABRICS."

Following a long and consistent line of decisions of the board and courts, legislatively approved, this court *has* held, and *does* hold, that the test of whether or

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not a fabric is "plain woven" (par. 283, tariff act of 1913) is the appearance its weave presents, and not the manner of its weaving.

2. PLAIN DOUBLE-WOVEN CARD CLOTH IN CHIEF VALUE OF FLAX.

Card cloth in chief value of flax, known in the textile industry as a "plain double weave," woven double by an intricate and elaborate method for the purpose of increasing its weight and strength, but presenting by its weave a plain, as distinguished from a figured or twilled, effect, is dutiable as "plain woven fabrics" (par. 283, tariff act of 1913), and not as "manufactures of flax" (par. 284).

## United States Court of Customs Appeals, December 21, 1916.

APPEAL from Board of United States General Appraisers, G. A. 7865 (T. D. 36193).

[Reversed.]

*Searle & Waterhouse* (*Wm. E. Waterhouse* of counsel) for appellants.

*Bert Hanson*, Assistant Attorney General (*Thomas J. Doherty* and *Martin T. Baldwin*, special attorneys, of counsel), for the United States.

[Oral argument November 1, 1916, by Mr. Waterhouse and Mr. Baldwin.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

This importation was of card cloth. The Board of General Appraisers aptly described the merchandise in its finding of fact by the following language:

It appears from the record, and we find as facts, that the cloth in question is used in making card clothing; that the warp threads are made of flax and the weft of wool and that flax is the component of chief value; that the fabric is woven double for the purpose of increasing the weight and strength; that there are two sets of weft threads and five sets of warp threads; that the weft threads on each face of the fabric pass alternately over one warp and under one warp thread; and that the warp threads pass over one weft thread in the face or upper layer of the double fabric, then pass down to the other side or back of the fabric, going under one weft thread in the lower layer of the fabric before returning to the upper surface, thus binding the two fabrics together, but, inasmuch as the fabric is double and there are two sets of weft threads, before the warp threads return to the upper surface they pass under four weft threads. Thus the warp threads throughout the whole fabric go over one and under four weft threads, but the cloth is so made that each face or surface appears to be plain woven, both the warp and the weft threads appearing to go over one and under one thread, there being no skip visible on either surface. The importers' witnesses who testified in the trial of the particular protests now before us for decision said that the fabric is designated by weavers in the textile industry as a "plain double weave."

The issue presented is whether the goods are properly classifiable for dutiable purposes under paragraph 284 of the tariff act of 1913 as "manufactures of flax," or under paragraph 283 thereof as "plain woven fabrics." The board held them not within the latter term. The importers appeal.

Predicating its considerations upon the above statement of facts the board observed:

But is a plain double weave actually a plain weave? It has been held that certain jute canvas having a double warp, but which was not twilled or figured in any manner in the process of weaving, was a plain woven fabric (*In re* Lamb, G. A. 4097; T. D. 19098, affirmed by the court in the case of United States *v.* Lamb, 99 Fed., 262) and

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that the term "plain woven" means plain as distinguished from twilled or figured effects produced in the process of weaving. *In re* White, G. A. 5035 (T. D. 23386); *In re* Downing & Co., G. A. 6063 (T. D. 26445); *In re* White, G. A. 7222 (T. D. 31588), affirmed by the court in the case of White *v.* United States (2 Ct. Cust. Appls., 327; T. D. 32054). But no case has been called to our attention in which the question has been raised as to whether or not double fabrics, which are plain on the surface but are made by an elaborate system of weaving, are plain woven.

This court in White & Co. *v.* United States (2 Ct. Cust. Appls., 327; T. D. 32054) and in United States *v.* White & Co. (3 Ct. Cust. Appls., 382; T. D. 32968), interpreted the words "plain woven fabrics" as they appeared in paragraph 357 of the tariff act of 1909, and in United States *v.* Douglas & Berry *et al.* (6 Ct. Cust. Appls., 100; T. D. 35342), the court construed the same term as it appears in the present act, paragraph 283, which is the corresponding paragraph *in pari materia* to said paragraph 357, act of 1909. Following a long and consistent line of decisions of the board and courts legislatively approved, this court in all said opinions declared the determinative test of whether or not a fabric was "plain woven" to be the appearance presented by and not the weave thereof itself. In the last cited case the court observed that in view of the legislative adoption of previous adjudication it was doubtful if the term could be otherwise varied by commercial usage. The court, however, examined the evidence offered and held it did not establish a commercial usage contrary to the previously declared force of the term. The ample discussion in those cases renders unnecessary extended consideration here.

The particular goods are well described as fabricated of a "plain double weave." The effect of the weave is to present a plain as distinguished from a figured or twilled effect. That effect is homogeneous throughout the entire surface of the goods, no contrasted weaves appearing, as in United States *v.* White & Co. (3 Ct. Cust. Appls., 382; T. D. 32968), to thereby constitute other than the surface of a homogeneous plain effect. The court is of the opinion, therefore, that the board erred.

*Reversed.*

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(T. D. 36909.)

*Metal pencil holders and pencils.*

UNITED STATES *v.* BORGFELDT & CO. (No. 1752).

1. LEGISLATIVE AND JUDICIAL PROVINCES.

If a construction of a statute made necessary by the settled rules of statutory construction works a hardship, the remedy is with the legislature, not the courts.

2. SEGREGATION.

It is well settled that goods claimed and invoiced as entireties may, for dutiable purposes, be segregated and the different parts rated for duty under separate provisions of the law applicable to such parts.

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3. CONSTRUCTION, LEGISLATIVE RECOGNITION OF.

In reenacting in substantially the same words the provision for lead pencils in successive tariff acts, Congress sanctioned the administrative and judicial construction which rated them and their holders separately for dutiable purposes.

4. PENCILS OF WOOD WITH METAL HOLDERS.

Wooden lead pencils with metal holders are not dutiable as entireties. The pencils are dutiable as such under paragraph 378, tariff act of 1913, and the holders as metal articles under paragraph 167.

## United States Court of Customs Appeals, December 21, 1916.

APPEAL from Board of United States General Appraisers, Abstract 39847.

[Reversed.]

*Bert Hanson*, Assistant Attorney General (*Charles D. Lawrence*, special attorney, of counsel), for the United States.

*Comstock & Washburn* (*Albert H. Washburn* and *George J. Puckhafer* of counsel) for appellees.

[Oral argument December 7, 1916, by Mr. Hanson and Mr. Washburn.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

These importations, as reported by the appraiser, consist of "metal pencil holders with pencils of wood attached. * * *" The pencil holders are of metal; the pencils are of wood with a lead filling; the holders are of the customary size and length; the pencils are of the usual size or diameter and about 1½ or 2 inches in length. They were rated for duty by the collector at the port of New York separately, the metal holders as "articles composed wholly or in chief value of metal" under paragraph 167 of the tariff act of 1913, and the pencils under paragraph 378 of that act as "pencils of wood, or other material, filled with lead." The claim of the protestants, which was sustained by the Board of General Appraisers, is that the articles are properly dutiable as entireties, and, being in chief value of metal, the entire article is claimed properly ratable for duty under the provisions of paragraph 167 as manufactures in chief value of metal. The Government, the appellant here, controverts that claim.

The question is one of construction. While articles in chief value of metal are expressly provided for in paragraph 167, *infra*, pencils of lead are also provided for in paragraph 378, hereinafter quoted. While it is stated by counsel for the importers at the hearing, and not challenged by the Government counsel, that the construction adopted by the collector resulted in a duty of 150 per cent upon the pencils, nevertheless, if controlled by the settled rules of construction, this court has no alternative but to affirm that assessment. The relief in such cases is within the jurisdiction of Congress and not with this court.

In the opinion of the court the rule of long-continued and established practice, which has been invoked and applied in many cases

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in this and the Supreme Court of the United States as controlling decision, is conspicuously applicable in this case. The provision for lead pencils in the tariff laws has been essentially the same from and including the tariff act of 1883 to and including the tariff act of 1913, as follows:

*Act of 1883.*

473. Pencils of wood filled with lead or other material and pencils of lead, * * *.

*Act of 1890.*

466. Pencils of wood filled with lead or other material, and pencils of lead, * * *.

*Act of 1894.*

357. Pencils of wood filled with lead or other material, * * *.

*Act of 1897.*

456. Pencils of paper or wood filled with lead or other material, and pencils of lead, * * *.

*Act of 1909.*

472. Pencils of paper or wood, or other material not metal, filled with lead or other material, and pencils of lead, * * *.

*Act of 1913.*

378. Pencils of paper or wood, or other material not metal, filled with lead or other material, pencils of lead, * * *.

Paragraph 167 of the tariff act of 1913 provides for articles in chief value of metal in the following words:

167. Articles or wares not specially provided for in this section * * * if composed wholly or in chief value of iron, steel, lead, copper, brass, nickel, pewter, zinc, aluminum, or other metal, but not plated with gold or silver, and whether partly or wholly manufactured * * *.

Essentially similar provisions appeared in all the tariff acts from 1883 to 1913, inclusive.

The principle that goods claimed and invoiced as entireties may for dutiable purposes be segregated and the different parts rated for duty under separate provisions of the law applicable to such parts was approved by the courts in a decision by Judge Lacombe, *In re* Crowley (50 Fed., 465), decided in 1892. The goods there were wool robes, parts of the robes being embroidered and parts plain, stated on the invoice as entireties and assessed as "manufactures of worsted, embroidered." The Circuit Court for the Southern District of New York upheld a decision of the Board of General Appraisers separating the parts of the robes embroidered from those plain and rating them separately for duty at different rates under applicable paragraphs of the act. On appeal the principle was affirmed by the United States Circuit Court of Appeals for the Second District, *In re* Crowley (55 Fed., 283).

In United States *v.* Hensel (98 Fed., 418), the same court of appeals applied the principle to a different state of facts. The frames of dutiable oil paintings were held dutiable, the court expressly resting

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the decision, not as coverings or holders thereof at the same rate under the customs administrative law but as separate entireties and importations. The adjudication, it is instructive to note, was expressly based by the court upon the established practice of the Treasury Department.

The principle seems first to have been applied by the Board of General Appraisers in the more immediately related case of Heilbrunn & Co.'s case, G. A. 2484 (T. D. 14762), decided in 1894. That case concerned penholders and pens, the pens having been imported with the penholders and as parts thereof or as accessory thereto. The board held them separately ratable for duty, the pens being provided for in paragraph 204 of the tariff act of 1890 and the holders under paragraph 205 providing for "penholders or parts thereof." The case was rested upon *In re* Crowley, *supra*.

In Noons's case, G.A.4731 (T. D. 22378), the question decided in G. A. 2484 (T. D. 14762) was again before the board, and decided in 1900 with like result. That case arose under similar provisions of the tariff act of 1897.

In Borgfeldt & Co.'s case, G. A. 4976 (T. D. 23214), decided in 1901, an appeal to the Board of General Appraisers by this appellee, the the precise question was again decided by the board. In that case the article was composed of a metal holder made to hold a reversible tube at either end, in one of which reversible tubes there was a penholder with a pen, and in the other a lead pencil. The board held the merchandise not dutiable as an entirety but separately dutiable, the pens under the provisions of paragraph 186 of the tariff act of 1897, providing for "pens, metallic," the pencils under paragraph 456, *supra*, and the metal tubes as manufactures of metal under paragraph 193 of that act.

In Irwin & Sons case, G. A. 6203 (T. D. 26851), decided in 1905, the principle was again affirmed by the Board of General Appraisers, the subject matter of decision being pen points and barrels and wooden holders.

In Fillmann, Lee & Happel case, Abstract 17048 (T. D. 28450), decided in 1907, the Board of General Appraisers again affirmed the principle, holding that certain combination lead pencils, metal holders, and cigar attachments were separately dutiable under the appropriate paragraphs of the tariff act of 1897. There seems, therefore, to have been a uniform course of decision holding that within the tariff provisions for "pencils of wood filled with lead" were uniformly included the pencil portion of importations similar to these for a period of at least a quarter of a century.

The Congress in enacting the several tariff acts, including that of 1913, reenacted the words substantially *in hæc verba*, thereby legislatively adopting the uniform construction put upon them by this long and uniform course of judicial construction.

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The court has no other alternative, therefore, in deference to well-settled rules of construction, than to hold that the amplitude of that paragraph is sufficient and was intended by Congress to cover the merchandise in question and to so rate them for duty.

An instructive statutory side light upon the intent of the Congress here sought to be ascertained is afforded by contemporary legislation and decision. In Irwin & Sons case, *supra*, the board in 1905 had held that combination penholders of metal tubes, pens, and pencils were separately ratable for duty under three different paragraphs of the act. Congress at its next revision of the tariff law, obviously intending to meet that situation and decision, by paragraph 187 of the tariff act of 1909 (reenacted in the act of 1913 as a part of paragraph 157), enacted a provision for "combination penholders, comprising penholder, pencil, rubber eraser, automatic stamp, or other attachment, * * *: *Provided*, That pens and penholders shall be assessed for duty separately." On January 30, 1913, in B. Ilfelder & Co.'s case, Abstract 31191 (T. D. 33145), decided prior to the enactment of the present act, the board reviewing this provision held it legislatively constituted the particular combinations of holders, pens, and pencils an "entirety." Equally true Congress by the provision, obviously providing against any possible construction of the provision to the contrary, declared that pens and penholders should be separately assessed. Herein is made clear the intent of Congress that *only* the particular combination of the three stated parts should be held an entirety, leaving undisturbed the long established practice as to other combinations *in pari materia*. Congress having considered this judicial course and legislated with reference to one phrase thereof only, this court does not feel justified in judicially extending that legislation in further revising the earlier and long-established practice. Indeed the course of Congress may well be deemed an implied approval of all such not legislatively changed.

It was declared by this court in an early decision, Goussios & Co. *et al.* *v.* United States (2 Ct. Cust. Appls., 317; T. D. 32051), that the rule of administrative construction is a *master rule*. That rule has been so often reaffirmed and applied by this and the Supreme Court that its determinative force, where applicable, can not be questioned. See Shallus *v.* United States (1 Ct. Cust. Appls., 556; T. D. 31552); United States *v.* Myers (1 Ct. Cust. Appls., 257; T. D. 31301); Salomon *v.* United States (2 Ct. Cust. Appls., 92; T. D. 31635); Bloomingdale Bros. *v.* United States (3 Ct. Cust. Appls., 204; T. D. 32530); United States *v.* Post & Co. (3 Ct. Cust. Appls., 260; T. D. 32568); Psaki Bros. *v.* United States (3 Ct. Cust. Appls., 479; T. D. 33122); Kronfeld, Saunders & Co. *et al.* *v.* United States (5 Ct. Cust. Appls., 222; T. D. 34399); Ulmann & Co. *v.* United States (5 Ct. Cust. Appls., 357; T. D. 34551); United States *v.* Steeb & Co. (6 Ct. Cust. Appls., 275; T. D. 35503); Edwards's Lessee *v.* Darby (25 U. S., 206); Pennoyer *v.* McConnaughy (140 U. S., 1); Copper Queen Mining Co.

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*v.* Arizona Board (206 U. S., 474); United States *v.* Midwest Oil Co. (236 U. S., 459).

The court, therefore, is of the opinion that there has been such a legislative, administrative, and judicial construction rating the parts of such combinations separately for dutiable purposes, long established and uniformly continued, that it can not, except in violent and unwarranted disregard of well-settled rules of statutory construction, do other than hold such parts separately dutiable and reverse the contrary decision of the Board of General Appraisers. It is accordingly decreed.

*Reversed.*

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## (T. D. 36910.)

### *Wool and silk dress goods.*

UNITED STATES *v.* SALFNER (No. 1690).

1. CONSTRUCTION, PARAGRAPHS 310, TARIFF ACT OF 1913, AND 381, TARIFF ACT OF 1909.

Paragraph 310, tariff act of 1913, kept in full force and effect until January 1, 1914, not only the *rates* but also the *enumerations* of Schedule K, tariff act of 1909, except as otherwise specifically provided by the act of 1913. Consequently, the provision of paragraph 381, tariff act of 1909, in relation to "women's and children's dress goods * * * composed in whole or in part of wool" remained in full force and effect until January 1, 1914.

2. RELATIVE SPECIFICITY—PARAGRAPHS 381, TARIFF ACT OF 1909, AND 318, TARIFF ACT OF 1913.

With reference to women's and children's dress goods, composed in part of wool but in chief value of silk, the language "dress goods composed in part of wool," paragraph 381, tariff act of 1909, is more specific than the language "woven fabrics, in the piece or otherwise, of which silk is the component material of chief value," paragraph 318, tariff act of 1913.—Hecht & Co. *v.* United States (5 Ct. Cust. Appls., 261; T. D. 34444) distinguished.

3. DRESS GOODS OF WOOL AND SILK, SILK CHIEF VALUE.

Women's and children's dress goods, composed in part of wool but in chief value of silk, imported in November, 1913, were dutiable as "women's and children's dress goods * * * composed wholly or in part of wool," paragraph 381, tariff act of 1909.

United States Court of Customs Appeals, December 21, 1916.

APPEAL from Board of United States General Appraisers, Abstract 39119.

[Reversed.]

*Bert Hanson*, Assistant Attorney General (*Leland N. Wood*, special attorney, of counsel), for the United States.

*Allan R. Brown* for appellee.

[Oral argument October 25, 1916, by Mr. Hanson and Mr. Brown.]

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

The merchandise in this case consists of certain women's and children's dress goods, composed in part of wool, but in chief value

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of silk, which was imported into this country in November, 1913. It may be noted that the present tariff act became effective on October 4, 1913.

The present importations were assessed with duty under the provision for "women's and children's dress goods * * * composed wholly or in part of wool," contained in paragraph 381 of Schedule K of the tariff act of 1909. This assessment under the act of 1909 upon merchandise imported in November, 1913, was made upon the alleged authority of paragraph 310 of the act of 1913, whereby certain provisions of the former act were continued in effect until January 1, 1914.

The importer protested against the assessment of the goods under the act of 1909, claiming them to be dutiable at 45 per cent ad valorem under paragraph 318 of the act of 1913, under the enumeration of "woven fabrics, in the piece or otherwise, of which silk is the component material of chief value."

The protest was submitted to the Board of General Appraisers and was sustained. The Government now appeals.

The following is a copy of the paragraphs which will be cited in this decision:

*Act of 1909.*

381. On women's and children's dress goods, coat linings, Italian cloths, bunting, and goods of similar description or character composed wholly or in part of wool, and not specially provided for in this section, the duty shall be eleven cents per square yard; and in addition thereto on all the foregoing valued at not above seventy cents per pound, fifty per centum ad valorem; valued above seventy cents per pound, fifty-five per centum ad valorem: *Provided*, That on all the foregoing, weighing over four ounces per square yard, the duty shall be the same as imposed by this schedule on cloths.

403. All manufactures of silk, or of which silk is the component material of chief value, including such as have India rubber as a component material, not specially provided for in this section, fifty per centum ad valorem: *Provided*, That all manufactures of silk enumerated under any paragraph of this schedule, if composed in any part of wool, shall be classified and assessed for duty as manufactures of wool.

*Act of 1913.*

310. The provisions of this schedule (K) shall be effective on and after the first day of January, nineteen hundred and fourteen, until which date the rates of duty now provided by Schedule K of the existing law shall remain in full force and effect.

318. Woven fabrics, in the piece or otherwise, of which silk is the component material of chief value, and all manufactures of silk, or of which silk or silk and India rubber are the component materials of chief value, not specially provided for in this section, 45 per centum ad valorem.

*Free list.*

650. Wool of the sheep, hair of the camel, and other like animals, and all wools and hair on the skin of such animals, and paper twine for binding any of the foregoing. This paragraph shall be effective on and after the first day of December, nineteen hundred and thirteen, until which time the rates of duty now provided by Schedule K of the existing law shall remain in full force and effect.

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651. Wool wastes: All noils, top waste, card waste, slubbing waste, roving waste, ring waste, yarn waste, bur waste, thread waste, garnetted waste, shoddies, mungo, flocks, wool extract, carbonized wool, carbonized noils, and all other wastes not specially provided for in this section. This paragraph shall be effective on and after the first day of December, nineteen hundred and thirteen, until which time the rates of duty now provided by Schedule K of the existing law shall remain in full force and effect.

The first question which arises in the present case is whether the provisions of paragraph 381, act of 1909, remained in force until January 1, 1914, by virtue of the terms of paragraph 310 of the act of 1913. The importer contends that the latter paragraph was not designed by Congress to continue in effect the dutiable enumerations of the former Schedule K, but was designed only to continue in effect the rates of duty provided by the former schedule upon such enumerations as appeared alike in Schedule K of each act. According to this view paragraph 310 of the later act did not serve to extend the validity of the enumerations of the former schedule until January 1, 1914, but only to substitute until that time the former rates of duty for those prescribed by the latter schedule, in so far as the enumerations of the two schedules were identical. Inasmuch therefore as the enumeration of "women's and children's dress goods composed in part of wool" appeared only in the former schedule, and not in the latter one, it is argued that the rates imposed upon such goods by the former act were not imported into the latter one by force of the saving clause in question.

This interpretation was at one time placed by the Treasury Department upon paragraph 310 of the later act. In T. D. 33821, issued on October 23, 1913, the department said:

The department construes paragraph 310 to mean that only the articles and manufactures of wool provided for in paragraphs 286 to 309 of the present tariff act shall be subject to duty under the provisions of Schedule K of the tariff act of August 5, 1909, until January 1, 1914, and not that all articles and manufactures of wool, which were classified under Schedule K of the act of August 5, 1909, shall continue to be classified under the said schedule until January 1, 1914.

We are not able to agree with the foregoing interpretation of paragraph 310 of the act of 1913. It is of course plain that the rates of duty prescribed by Schedule K of the act of 1909 were in most instances largely reduced and in others wholly abolished by the act of 1913. In certain instances the dutiable enumerations in the latter act were altered as compared with the corresponding enumerations in the former act, whereby a reduction in their rates of duty was accomplished. It is clear that Congress enacted the saving provisions of paragraph 310 of the later act as a postponement of these reductions in order that reasonable time might be given both to importers and manufacturers to adapt themselves to the lower rates of duty. This legislative purpose applied alike to all of the contemplated reductions,



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regardless of the mere form of their adoption. This is well set out in the case of United States *v.* Klumpp (169 U. S., 209, 215), wherein Mr. Chief Justice Fuller said:

> The reason for the postponing of the taking effect of the reduction of duties obviously had nothing to do with the process of manufacture, but related to the material of which the goods were composed, which material had been relieved from duty by paragraph 685 of the act.
>
> Congress undoubtedly concluded that the manufacturers of goods from wool had laid in a large stock of material which equitably they should be allowed a reasonable time to work off and that there was probably on hand a large stock of goods, to dispose of which reasonable time should be allowed, rather than that the large dealers should be induced to bring in foreign goods at a cost which involved ruinous competition; while at the same time the wool growers ought to have their original market until they could adjust themselves to the new condition of things.
>
> The specific rate was compensatory, and, when stricken out, and the duty on raw material abolished, a postponement was provided for in order to avoid injustice.
>
> But the reason for postponing the reduction on manufactures of wool, which, on the face of the act, we think properly imputable to Congress, is as applicable to worsted goods as to any other goods fabricated from wool.

For the accomplishment of the legislative purpose above set out, paragraph 310 of the act of 1913 was enacted. It provided that the provisions of Schedule K of the later act should not become effective until January 1, 1914, and that until that date "the rates of duty now provided by Schedule K of the existing law shall remain in full force and effect." The latter provision applies literally to all of the rates of duty prescribed by the earlier schedule, and not to part of them only. It is true that the provision in question applies in terms to the "rates of duty" provided by the former schedule and not to its enumerations or classifications of merchandise for duty; but the former reference necessarily includes the latter, since the rates of duty of the former schedule can not "remain in full force and effect" unless the dutiable enumerations to which those rates applied shall likewise remain in full force and effect. And this view is favored by a consideration of the legislative intent in the enactment of the saving clause in question, as above set out.

We conclude therefore that the saving clause of paragraph 310, *supra,* applied to all of the enumerations for duty included within Schedule K of the former act, in the absence of provisions in the later act in the nature of specific exceptions thereto.

We find such exceptions to the foregoing provisions in paragraphs 650 and 651 of the free list of 1913. These paragraphs are copied in full above; they provide for the free entry of wool of the sheep, hair of the camel and other like animals, wool wastes, etc., subject to a proviso that the paragraphs shall not be effective until December 1, 1913, "until which time the rates of duty now provided by Schedule K of the existing law shall remain in full force and effect." It may be noted that the wool, hair, and wool wastes, just named, were made

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dutiable by Schedule K of the act of 1909; it may also be noted that paragraphs 650 and 651, *supra*, fix December 1, 1913, instead of January 1, 1914, as the time up to which "the rates of duty now provided by Schedule K of the existing law shall remain in full force and effect."

According to our view the provisions of these paragraphs merely constitute exceptions to the rule declared by paragraph 310 of the same act. That paragraph provided in general that the dutiable provisions of Schedule K of the former act should continue in force until January 1, 1914. But paragraphs 650 and 651 provide that in respect to wool, wool waste, etc., the provisions of the former schedule should continue in effect until December 1, 1913, only, after which time the merchandise thus specifically enumerated should be admitted free of duty. It is true that this interpretation attaches a narrower signification to the clause "until which time the rates of duty now provided by Schedule K of the existing law shall remain in full force and effect," when found in paragraphs 650 and 651, than that given the same language when found in paragraph 310. Nevertheless we think that this difference of interpretation is justified and required by the different contexts of the two clauses and their relative positions in the act.

We conclude, therefore, that the provisions of paragraph 381 of the act of 1909 in relation to "women's and children's dress goods * * * composed in whole or in part of wool" were in full force and effect in November, 1913, at the time of the importation of the present merchandise, and that the merchandise responds to the description thereof. The next question which arises is whether the provisions of paragraph 318 of the act of 1913, for "woven fabrics, in the piece or otherwise, of which silk is the component material of chief value," is more specific in its application to the present merchandise than the enumeration of "women's and children's dress goods * * * composed in part of wool." It is conceded that the goods in question are in fact women's and children's dress goods, composed in part of wool; it is also conceded that they are woven fabrics composed in chief value of silk. We find, furthermore, that such provision is modified by the clause, "not specially provided for in this section."

In comparing the two competing provisions in question we find that one is limited primarily to "dress goods," the other to "woven fabrics." It must be conceded that "dress goods" is a more narrow term than "woven fabrics," and is indeed a species thereof. On the other hand, the term "woven fabrics" in the present case is modified by the clause "composed in chief value of silk," which is more narrow and specific than the contrasting modifying clause "composed in part of wool." Hartranft *v.* Meyers (135 U. S., 237).

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In such a case we think that the primary or *eo nomine* limitations embodied in the contrasting enumerations should control, and accordingly we hold that "dress goods composed in part of wool" is a narrower and more specific description of the present merchandise than "woven fabrics, in the piece or otherwise, of which silk is the component material of chief value." Brody *v.* United States (2 Ct. Cust. Appls., 15; T. D. 31573); Thomsen *v.* United States (*Ib.*, 37; T. D. 31590); Krauss *v.* United States (*Ib.*, 17; T. D. 31574); United States *v.* Zinn (*Ib.*, 419; T. D. 32171); United States *v.* Vandegrift (3 Ct. Cust. Appls., 161; T. D. 32457); Bister *v.* United States (59 Fed., 452); Greenfield case, G. A. 5799 (T. D. 25629); and G. A. 4126 (T. D. 19249).

In the case of Brody *v.* United States, *supra*, this court held that an enumeration of "baskets of wood" should prevail over one for "manufactures of willow," the merchandise being baskets made of willow.

In the case of Thomsen *v.* United States, *supra*, this court made a similar decision in favor of an enumeration of "baskets of wood" as against one of "manufactures of chip," the merchandise being baskets made of chip.

In the case of United States *v.* Vandegrift, *supra*, this court held that a provision for "cloth * * * made wholly or in part of wool" was more specific than one for "manufactures of * * * india rubber * * * or of which these substances or any of them is the component material of chief value," the merchandise in the case answering to both of the competing descriptions.

In the case of Bister *v.* United States, *supra*, the Circuit Court of Appeals, Second Circuit, held upon a similar issue in favor of a provision for "women's and children's dress goods composed wholly or in part of wool," as against one for "manufactures of which silk is the component material of chief value," the merchandise in question responding in character to each enumeration. The court, speaking by Wallace, Chief Justice, said:

> It seems hardly debatable that if one provision of a tariff act should prescribe a duty on wearing apparel and another on all manufactures of which silk is the material of chief value, the former would supply the proper classification for an article of wearing apparel made of silk. * * * The case falls within the general rule that where a tariff act imposes a duty on an article by a specific name or description, general terms in the act, though embracing it broadly, are not applicable to it. The general must give way to the particular.

The reasoning of this decision was approved rather than departed from by the later decision of the same court in the case of Stern *v.* United States (98 Fed., 417).

In the Greenfield case, *supra*, the Board of General Appraisers similarly held in favor of a provision for "clothing * * * in part

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of wool," as against one for "manufactures in chief value of fur," the merchandise being overcoats made in chief value of fur.

Reference is made in argument to the case of Hecht & Co. *v.* United States (5 Ct. Cust. Appls., 261; T. D. 34444) as a conclusive authority in support of the importer's claim upon the subject of the relative degree of specificity of the competing provisions now in question, but we think that the present question does not come within the ruling made in that case. The comparison before the court in the Hecht case was between "clothing, ready made, and articles of wearing apparel of every description * * * composed wholly or in part of wool," and "clothing, ready made, and articles of wearing apparel of every description, * * * of which cotton or other vegetable fiber is the component material of chief value * * * *and not otherwise provided for in this section.*" The presence of the modifying clause, "not otherwise provided for," in the one provision and its absence from the other was regarded by the court as the controlling factor in the case, and decision was entered accordingly. In the present case, as already stated, the two competing provisions are alike modified by the clause "not specially provided for in this section."

The importer presents in his brief the claim that the merchandise at bar if imported before October 4, 1913, would have been dutiable under Schedule K of the tariff act of 1909 only by virtue of the proviso of paragraph 403 of that act, and that since this proviso was not a part of Schedule K and therefore was not extended by the terms of paragraph 310, *supra*, the present merchandise should not be assessed under Schedule K as extended by that paragraph.

We do not enlarge upon this branch of the argument because of our foregoing conclusion that the provisions of paragraph 381 of Schedule K of the act of 1909 taken alone apply more specifically to the merchandise at bar than do the competing provisions of paragraph 318 of the act of 1913, and therefore paragraph 403 of the act of 1909 becomes unimportant in relation to the assessment.

We hold that the decision of the board sustaining the importer's protest was erroneous, and it is *reversed.*

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